United States Court of Appeals

for the Second Circuit

APPENDIX

B
P/S

No. 75-4046

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION and
THE UNITED STATES OF AMERICA,
Respondents,

AERONAUTICAL RADIO, INC., *et al.*,
Intervenors.

On Petition To Review
An Order Of The Federal Communications Commission

JOINT APPENDIX

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FCC 75-253
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	DOCKET NO. 20376
Charges for Interstate Telephone Service, AT&T Transmittal No. 12241	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 4, 1975 ; Released: March 6 ,1975

By the Commission: Commissioners Lee, and Hooks concurring in part and dissenting in part and issuing statements; Commissioner Reid concurring and issuing a statement; Commissioner Quello concurring in the result.

1. The Commission has before it for consideration proposed tariff revisions filed by the American Telephone and Telegraph Company (AT&T) on January 3, 1975, calling for generally increased rates for the Bell System's interstate services, to be effective March 4, 1975. The proposed revisions are to: AT&T's Tariffs FCC No. 263, Long Distance Message Telecommunications Service (MTS); No. 259, Wide Area Telecommunications Service (WATS); and No. 260, Private Line Service. In its letter transmitting the revised tariff schedules and in information furnished in support of the proposed rate changes, AT&T states that its rate adjustments have been designed to produce a 7.2 percent net increase in Bell's interstate revenues on a future test year basis (or about $717 million annually before taxes), a 13.5 - 14.5 percent return on equity, and an overall rate of return of 10½ to 11 percent on Bell's interstate investment.

2. We have received numerous formal and informal objections to such filing 1/ seeking its rejection or designation for formal

1/ Formal pleadings were timely filed by the following parties: City of Chicago ("Chicago"), Commonwealth of Pennsylvania ("Pennsylvania"), The Council on Wage and Price Stability (the "Council"), the Executive Agencies of the United States, (the "Executive Agencies"), The National Small Business Association ("NSBA"), American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc. (the "Network Companies"), The Intermountain Network, Inc. ("IMN"), Mutual Broadcasting System, Inc. ("Mutual"), The American Newspaper Publishers Association ("ANPA"), Associated Press ("AP"), Commodity News Services, Inc. ("CNS"), United Press International, Inc. ("UPI"), The Ad Hoc Telecommunications Committee (the "Ad Hoc Committee"), Aeronautical Radio, Inc. ("ARINC"), Aerospace Industries Association of America, Inc. ("AIA"), Air Transport Association of America ("ATA"), (continued on page 2.)

investigation with an accounting order and suspension of the effective date of the revised tariff schedules for the maximum period permitted under present law.

3. The tariff revisions would result in generally increased MTS rates for service within the United States, except Hawaii and Alaska, and between the United States, except Hawaii and Alaska, and Canada and Mexico. 2/ They would result in generally increased rate levels for WATS and Private Line services.

4. Revisions in MTS tariff schedules of charges and conditions of service within the United States are designed to provide for a 7.2 percent increase in revenues and include the following changes: (1) a one-minute initial period for all customer dialed station calls in all time periods; (2) a 35 percent discount for all customer dialed station calls in the evening rate period; and (3) a 60 percent discount for all customer dialed station calls in the night and weekend rate periods. Proportionately larger increases in long-distance rates have been placed on those services where the costs are relatively greater, namely, on person-to-person calls, operator handled station calls, and calls of short mileages. Revisions in the U.S. - Canada proposed schedule include: (1) introduction of a dial station-to-station rate for the Day and Evening rate periods in addition to the present Dial Station-to-Station Night rate period; (2) establishment of a one-minute initial rate period for all time periods with a 10 cent minimum charge per message; (3) discounts

---

1/ (continued from page 1) National Data Corporation ("National Data"), Data Transmission Company ("Datran"), and our Common Carrier Bureau's Trial Staff in Docket No. 19129 (the "Trial Staff"). Also before us are timely filed objections by the People of the State of California and the Public Utilities Commission of the State of California ("California"). In addition, numerous informal objections have been received and letters and telegrams expressing interest in the proposed rate increases and any hearings to be held with respect thereto, or commenting on the merits of the proposed rates. AT&T timely filed a reply on February 5, 1975. Attached as Appendix A is a list of the pleadings filed.

2/ All the revisions are published to become effective on March 4, 1975 except certain rates from the United States to Mexico and Canada which were published to become effective on March 29, 1975.

of 35 percent for the Evening and 60 percent for the Night rate periods, applicable to Dial Station-to-Station initial periods and additional minutes for all classes of service; (4) a uniform 24-hour rate for an initial 3-minute period for all Operator Station-to-Station and Person-to-Person messages; (5) common additional minute rates for all classes of services; (6) reduction of the number of mileage rate steps from 27 to 23; (7) elimination of the fifteen cent surcharge for collect calls; (8) a night discount rate period for additional minutes for Operator Station-to-Station and Person-to-Person messages and extension of the Night reduced rate period from 6 A.M. to 8 A.M.; and (9) general increases and decreases in the different classes of service. Revisions in the U.S. - Mexico proposed schedule include: (1) a Simple Station Rate Class for all hours of the day and all days of the week. Simple Station Service would apply to station messages dialed by the customer or station messages that could be dialed by the customer if facilities were available; (2) a uniform 24-hour rate for the initial 3-minute period for all Person-to-Person messages; (3) a common additional minute rate for all call classes beginning at 245 miles for Day calls and 86 miles for Evening calls; (4) reduction of the number of mileage rate steps from 27 to 21; (5) elimination of the surcharge for collect calls; (6) modification of the Evening rate period from 8 P.M. to 11 P.M., and extension of the Night rate period to 8 A.M., and (7) general increases and decreases in the different classes of service.

5. Revisions in the WATS schedules would provide for: (1) increased rates for measured time service for distances up to 900 miles and decreased monthly rates for measured time service for distances beyond 900 miles; (2) increased monthly rates for Full Business Day Service for distances up to 1600 miles, and decreased monthly rates for Full Business Day Service beyond 1600 miles; and (3) with the exception of installation, move and conversion charges for WATS and extension stations, all other rates and charges in Tariff F.C.C. No. 259 (e.g., monthly rates and installation charges for connecting arrangements) would be increased 7.8 percent and rounded in the same manner as the equipment rates for Private Line Service.

6. Bell alleges that its proposed revisions in Private Line Services will increase all domestic rate elements in Tariff F.C.C. No. 260 by 7.8 percent, except the rates for television service (Series 7000 services) and any items that were filed to become effective after September 1, 1974. After application of the 7.8 percent increase, each rate element, with the exception of rates for interexchange channel mileage,

would be rounded to the nearest five cents for items up to $100.00 and to the nearest dollar for items of $100.00 or more. Rates for Telpak (Series 5000) and wide band high speed data and facsimile (Series 8000) base capacity would be rounded to the nearest five cents while all other interexchange channel mileage rates would be rounded to the nearest cent.

7. AT&T explained its reasons for seeking the proposed increased rates for its interstate services in a letter dated January 3, 1975 to Chairman Wiley. 3/ It therein stated:

> economic and financial circumstances now require an interstate earning level of 10½ to 11 percent on investment, in order to sustain the financial integrity of the Bell System and to permit the attraction of necessary debt and equity capital under prevailing conditions in the money markets.

AT&T estimates that the charges for about 30 percent of all MTS calls will be lower; and that by altering their calling habits, customers may take advantage of further savings in their long-distance calls. According to AT&T, its pricing innovations will also promote more efficient use of the telephone network, facilities improvements in productivity, and produce substantial cost savings.

8. AT&T stated that the proposed increases in WATS and Private Line rates were filed to achieve about the same proportionate increase in the revenue levels for those services as that which would be derived from MTS. The WATS rate changes are designed to maintain approximately the same rate relationships that now exist between WATS and MTS. According to AT&T's Janua[illegible]etter:

> In view of the pendency of several Commission proceedings relating to the rate structure of the private line services, we are not now filing structural revisions within those services. Rather for purposes of this overall rate increase filing, we are generally applying the same percentage increase to the various rate elements in the private line services . . . .
>
> The filed rate changes are designed to produce increased revenues from Bell's interstate services of about $717 million per year and, together with associated cost

3/ AT&T's January 3, 1975 letter is attached hereto as Appendix B.

savings, to improve net earnings after taxes by about $433 million per year at the 1975 level of business.

These rate changes are of critical and immediate importance because of the extraordinary financial and economic conditions currently affecting Bell's cost of operations and cost of capital.

AT&T's filing is comprised of 267 tariff pages and 240 pages of statements by Company officials and outside consultants and more than 8000 pages of related data and work papers in support of various aspects of the tariff revisions.

9. The Commission received petitions containing requests that we suspend and investigate the AT&T tariff revisions from California, Chicago, Pennsylvania, the Executive Agencies, the Council, the Network Companies, NSBA, Datran, National Data, Mutual, and the Trial Staff. The Network Companies and IMN confine their requests for suspension to private line service rate revisions. The Separated Trial Staff requests that we suspend only the MTS revisions, arguing that this action would reduce the present subsidization of other services by MTS rate payers. Other petitions seeking rejection, cancellation, or withdrawal of the AT&T tariff revisions or, as alternative relief, suspension and investigation of these revisions were received from CNS, ANPA, ARINC, AIA, ATA, AP and UPI. ARINC has confined its request for rejection or suspension to the Series 5000 private line services and teletypewriter equipment; ATA has confined its request to Series 5000 services. The Ad Hoc Committee has requested that we reject the AT&T tariff revisions for the private line services. ANPA has also filed a separate petition requesting rejection. Among these petitioners urging rejection of AT&T's tariff revisions, AP, AIA, CNS, ANPA, UPI and the Ad Hoc Committee have argued that we have the authority to reject these revisions without a hearing since AT&T's rates were implicitly prescribed by the Commission in Docket No. 19129, 4/ and thus, under Section 205 of the Act, 5/ AT&T cannot file higher rates without first obtaining the Commission's approval. AIA, ATA, and ARINC have argued that we can reject the tariff revisions without a hearing because AT&T's data supporting its revisions do not comply with Section 61.38 of the Commission's Rules. 6/ In addition,

4/ Decision and Order in Phase I of the Message Toll Telephone Rate Case, Docket No. 19129, 38 FCC 2d 213 (1972), reconsideration denied. 42 FCC 2d 293 (1973), appealed sub nom Ralph Nader v FCC Nos 73-1045, 73-2051 (D.C. Cir.). See also 38 FCC 2d 984 (1973).

5/ 47 U.S.C. 205.

6/ 47 C.F.R. 61 38.

ATA asserts that we can summarily reject the private line service rate increases since prior such increases are still under consideration in Docket No. 18128, and ARINC asserts that summary rejection can be predicated on AT&T's failure to consider the competitive nature of Telpak service. Many of these same petitioners have argued that we should exercise this power to summarily reject AT&T's tariff revisions in order not to unduly disrupt proceedings in other dockets. 7/

10. Various petitioners urging suspension have asserted that AT&T has failed to justify adequately its proposed tariff revisions. The Council and Mutual argue that AT&T's increased rates can only be based in small part upon increased operating costs. The Council further argues that neither AT&T's increased cost of debt nor its needs for favorable equity financing justifies the magnitude of AT&T's proposed rate increases. Mutual, Pennsylvania and AIA also believe that the rate increases cannot be predicated on a need for a higher equity return or higher debt costs. Mutual adds that AT&T's capital requirements are likely to be reduced in 1975 through tax and economic relief as well as reduced customer demand. The Separated Trial Staff asserts that AT&T's expectations as to 1975 spending levels, on which its proposed rates are based, are in error since these expectations overlook present inefficiencies in the Bell System's operating and capital acquisition programs, as revealed in the Docket No. 19129 inquiry; a $600 million cutback in 1975 construction; and recent labor force reductions together with a freeze on new hiring. The Separated Trial Staff urges the Commission to require that AT&T submit updated cost data reflecting all possible economies so that by the end of the suspension period lower rates can be substituted for those now proposed. The Executive Agencies believe that an investigation is necessary because AT&T's proposals far exceed rates declared to be reasonable in Docket No. 19129; because AT&T bases its revised tariffs on a hypothetical debt ratio; and because AT&T has used questionable methods to arrive at an equity component. The Executive Agencies, the Council, and the Separated Trial Staff also believe that AT&T has failed to justify its revised rate structure in MTS and the Network Companies question lack of such structural revisions in the private line services. IMN and the Network Companies state that AT&T has made no showing that additional capital needs for all its services justify increased rates in the Series 6000 audio services. National Data incorporates the Council's objections in its petition.

7/ The Message Toll Telephone Rate Case (Docket No. 19129); the Telpak/Private Line Case (Docket No. 18128); the WATS case (Docket No. 19989); and The High Density-Low Density Rate Structure Case (Docket No. 19919).

11. The economic impact of AT&T's tariff revisions have been cited by petitioners as justifying at least a suspension and investigation. The Council requests that if we find AT&T's rate structure modification to be justified after an investigation, we should take steps, such as phasing rate revisions, to ameliorate any inflationary impact. Concern for small and intermediate sized businesses is voiced by the Council, NSBA, and National Data. NSBA asks that we require special information from AT&T summarizing the anticipated impact of the proposed rates on large and small business users. National Data further petitions the Commission to seek from AT&T a voluntary deferral of the effective date of the tariffs beyond the three month suspension period. UPI, AP, ANPA, CNS and IMN have noted the operating costs of newspapers and news services are highly sensitive to increased charges for communications services. For this reason, they argue AT&T's tariff revisions should at least be suspended, and the adverse impact on regional news collection and dissemination investigated. Mutual and the Network Companies have argued that the rate increases for Series 6000 private line services will adversely impact radio networking and therefore should be investigated. Pennsylvania and California object to AT&T's tariff revisions because of their effect on rate payers for intrastate service. Pennsylvania notes that AT&T's interstate rate increases would lead to increased intrastate rates by virtue of the parity which Pennsylvania maintains between intrastate long-distance charges and the interstate levels. California requests that, if its petition to suspend and investigate is granted, the Commission designate as an issue modifications to the Separations Manual procedures 8/ and further order AT&T to submit the revenue requirements effects on each state as a consequence of the proposed rate increases. Alternatively, if its petition is denied, California requests a Commission order specifying that no shift in revenue requirements will be made as a result of the rate increases until possible separation manual changes have been considered. Other petitioners concerned with the economic effects of AT&T's tariff revisions include the Separated Trial Staff, ARINC, AIA, and the Executive Agencies.

12. Several petitioners have argued that AT&T's tariff revisions are unlawfully discrimiratory under Section 202(a). 9/ California argues that the revised MTS rate structure discriminates against rate payers in certain states vis-a-vis rate payers in other states. National Data argues that the tariff revisions unlawfully discriminate against WATS users whose access lines are concentrated in the lower numbered service areas. Since DDS, a competitive service, is not included in AT&T's tariff revisions, Datran argues that there is unlawful discrimination against customers of AT&T's monopoly services.

8/ 47 C.F.R. Part 67.

9/ 47 U.S.C. 202(a).

13. Separation of various issues raised by AT&T's tariff revisions is requested by several petitioners. The Council has argued that we establish at least two proceedings, one for rate level issues and another for rate structure issues. The Separated Trial Staff asks the Commission to assign all rate structure questions presented by AT&T's proposal to the Phase II inquiry in Docket No. 19129 on the grounds that similar rate structure issues have been raised and considered in that proceeding. Many petitioners, including the Executive Agencies, have urged the Commission to order AT&T to keep accurate accounts of all monies received by reason of the tariff revisions in the event that these revisions are found unjustified after the period of suspension has passed and the revisions have gone into effect. Mutual has requested that we require AT&T to include quality of service specifications in its tariff schedule and to provide a schedule to refunds to customers should it fail to meet these specifications.

14. AT&T opposed all petitions seeking to delay the effective date of the tariff. In AT&T's view, a suspension will irrevocably deny it just and reasonable rates which are urgently needed, while an accounting order will fully protect the interests of AT&T's customers. With respect to the petitions urging rejection, AT&T argues that there is no valid basis for such action. The Commission cannot invoke Section 205, AT&T asserts, because in our Phase I Order in Docket 19129 there was no "full hearing" on the rate issues or explicit prescription of rates; and no jurisdictional finding that the 1972 rates were "just and reasonable" as mandated by Section 205. AT&T argues further that the issuance of an accounting order in the 1972 decision was inconsistent with an implied prescription of rates. Finally, although rates of return were set as just and reasonable in the 1972 decision, AT&T argues that Section 205 does not authorize us to prescribe rates of return which cannot later be changed without Commission order. AT&T asserts that its data complied with Section 61.38 of our rules. It argues that a rejection would be effectively a prescription of rates and therefore invalid without the hearings and findings required by Section 205. In response to the Council's petition for suspension, AT&T argues that the Council significantly underestimated AT&T's increased labor and equity costs. It also takes issue with the Council's methods of estimating AT&T's necessary revenue increases. AT&T further notes that the Council has not supported its stated concern that small and intermediate business users will face severe hardship under the revised tariffs. The suggestion to phase the rate increases is, in AT&T's view, contrary to national objectives in that the revised MTS structure will actually curb inflation by allowing customers to make substantial cost savings. With respect to the Trial Staff's petition, AT&T asserts that the Trial Staff has made only one-sided contentions as to inefficiencies in operation and plant investment and failed to recognize AT&T's need to attract substantial amounts of new capital in future years. AT&T objects to the Trial Staff's request

for suspending only MTS rate increases and questions the Trial Staff's methods in arriving at its conclusion that MTS ratepayers subsidize other services. AT&T also denies Datran's assertion that the revised tariffs unlawfully discriminate against customers of AT&T's monopoly services and National Data's assertion that WATS increases over short distances are unjustified. Finally, AT&T disagrees with California's computation of the anticipated separations effect of the revised tariff and, in addition, argues that the separations effect issue should be addressed in a proceeding directed to the formulation of jurisdictional separations procedures.

Discussion

15. On November 22, 1972, the Commission adopted and released its Decision and Order in Phase I of Docket No. 19129 (38 FCC 2d 213) prescribing 8.5% as the rate of return required by AT&T

"to enable it to attract capital at reasonable cost and to maintain the credit of Bell; and to assure continued, adequate and safe interstate and foreign communications service to the public and to provide for necessary expansion to meet future requirements" 38 FCC 2d 213, 245. Although AT&T was allowed to file rate revisions designed to increase its interstate return only to the level of 8.5%, the Commission established a range above this level, i.e., 8.5 to 9.0% as an incentive for efficiency, to permit AT&T through improved efficiency or productivity gains to increase its earnings under such rates within a reasonable range above 8.5% without regulatory action on our part.

16. This action by the Commission was taken after a full evidentiary hearing, during which extensive evidence and exhibits were presented by Bell and other parties. Based upon this extensive record, the Commission determined the prevailing cost of debt 10/ and equity 11/ for Bell, and established the appropriate rate of return required to cover those costs. This action was a properly determined prescription of Bell's rate of return.12/ The effect of this action was to bar Bell from filing any rate revisions designed to increase its overall rate of return above the 8.5% level without obtaining the Commission's approval to increase this level by demonstrating that the level was no longer adequate.13/

10/ The embedded cost of debt was determined to be 6%. AT&T 38 FCC 2d 213, 229.

11/ The cost of equity was determined to be 10.5%. AT&T 38 FCC 2d 213, 23

12/ See 42 FCC 2d 293, 300 (1973) where we characterized our Phase I Order as a prescription.

13/ As noted above, the rate of return could be increased through increased efficiency and productivity, a maximum level of 9.0% was authorized, but this is not the situation presented by Bell's present tariff filing.

17. The Commission's action did not relate to the question of specific rate structure. This issue is being investigated in Docket 18128 and Phase II of Docket 19129. Thus, while Bell is legally free to alter its rate structure, the Commission's prescription prevents it from doing so in such a manner as to increase its overall earnings level above 8.5%. 14/ In seeking a modification of the order, a heavy burden clearly rests with Bell to demonstrate the basis for and extent of any modifications it proposes. Absent a finding by the Commission, that the prescribed rate of return should be modified, based upon known changes in Bell's capital costs and structure, the filing of a tariff designed to produce a rate of return in excess of 8.5% is prima facie unlawful.

18. In its present filing, AT&T seeks to increase its overall rate of return from 8.5% to 10.5 - 11%. It alleges such action is mandated by economic changes which have taken place since our Phase I order. These changes, according to Bell, have raised its cost of embedded debt from 6.0% to 6.9% and its cost of equity from 10.5% to 13.5% - 14.5%.

19. We are, of course, cognizant of the general changes and trends in the national economy. We also note that Bell's rate of return showed a decline to 7.89% in the last quarter of 1974, even though it was 8.53% overall for the year. Such a decline, if continued, would adversely impact Bell's ability to serve the public. We are also concerned that the recent downward trend in Bell's interest converage be arrested, to avoid any possibility that its bond ratings might be downrated with attendant impact on the availability and cost of debt financing. We wish to stress that our obligation to protect the consumer requires us not only to assure ourselves that excessive rates are not being charged but also that the carrier is financially capable of providing the consumer the needed service. This requires a rate of return sufficient to allow investors to have confidence in the financial integrity of the carrier so that it can maintain its credit and attract needed capital. F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944); F.P.C. v. Memphis Light, Gas & Water Div., 411 U.S. 458, 465-6 (1973).

14/ This distinction between prescribing a rate and an earning level explains why the Commission could issue an accounting order on Bell's rates. While the earning level was prescribed, the rates were carrier-made and thus subject to an accounting order. Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Ry. 284 U.S. 370, 390 (1932).

20. While we must reject AT&T's tariff filing as being in violation of our prior prescription order, we will consider those elements of the filing which seek to increase the rate of return as a request for modification of our prescription, and will address them accordingly. After carefully scrutnizing Bell's filing and all comments received, we believe that some modification of Bell's prescribed rate of return is in order. Bell's embedded cost of debt is a matter of historical record and the result of simple mathematical computation. No petitioner has objected to Bell's evidence that it has risen from 6.0% to 6.9% and is unlikely to decrease within the immediate future. Further, it is a matter of official notice that the proportion of debt in Bell's capital structure is 49%. However, while recent trends in the economy would indicate that the cost of equity may no longer be 10.5%, Bell has failed to show clearly whether and to what extent the cost of equity now exceeds 10.5%. This question must be tested in the crucible of an evidentiary hearing, and we are in this decision instituting such a hearing to be conducted on an expedited basis.15/

21. In view of the above we have determined that our prescription, to the extent indicated above, should be modified. We thus conclude that the just, fair and reasonable rate of return for Bell, under present conditions is 8.74% computed as follows: 16/

ITEM	Proportion of Capital (Percent)	Cost Rate (Percent)	Proportion of Total cost (Percent)
Debt	49	6.9	3.38
Total Equity	51	10.5	5.36
Total Cost			8.74 17/

22. Achievement by Bell of the 8.74% rate of return on its interstate operations that we have found herein to be appropriate, will require rate adjustments which will produce approximately $365 million in additional gross revenues before Federal income taxes over and above the comparable annualized fourth quarter 1974 revenues. We hereby authorize Bell to file such a tariff on not less than one days' notice. See 47 USC 203.

23. We now turn to the specific requests for relief in the petitions before us. Since we are rejecting herein the subject AT&T tariff filing, and instituting an investigation into the appropriate Bell rate of return we must deny those parts of the petitions listed in Paragraph 9 above which request suspension of the tariff filing and an

15/ This hearing, which will be limited to the appropriate levels for Bell's cost of equity and overall rate of return, should be completed within 9 months.

16/ Under the unique economic circumstances now existent we are prepared for purposes of this filing to accept the last quarter of 1974 as a valid test period.

17/ See basis of previous prescription 38 FCC 2d 213, 241. We shall still permit Bell to reach a 9% rate or return through increased efficiency and productivity.

an investigation to be ordered on such filing.18/ For the same reasons, we grant the petitions insofar as they seek rejection of the tariffs as unlawfully increasing a prescribed rate of return. We therefore need not reach the question concerning the effect of the tariff filing on other pending proceedings, as requested by several petitioners.

24. We agree with the separated staff of our Common Carrier Bureau in Docket No. 19129 that the primary interest of the ratepaying public, the Commission, and the Bell System would best be served by concluding Phase II of the hearing in that proceeding as soon as possible. Thus, we consider it inappropriate to include any rate structure or other issue raised in this new tariff in the Phase II proceeding, as well as our inquiries into Private Line Services (Docket No. 18128) and WATS (Docket No. 19989).

25. Finally, we believe it inappropriate to include the question of separations, as requested by California, in the narrow hearing ordered herein. We note that separations questions are presently deferred pending developments in Docket No. 20003 and should properly be before a federal-state joint board, such as that existing in the on-going Docket No. 18866 investigation. No purpose is served by having the same question examined in two forums.

26. Accordingly, IT IS ORDERED, That the tariff revisions filed by AT&T with its Transmittal No. 12241 ARE REJECTED;

27. IT IS FURTHER ORDERED, That pursuant to the provisions of Sections 4(i), and 4(j), 201, 205 and 403 of the Communications Act of 1934,as amended, an investigation and hearing is instituted into the authorized rate of return of AT&T from interstate services.

28. IT IS FURTHER ORDERED, that, pending the outcome of this hearing or further action by the Commission on the basis of known charges in Bell's capital structure or cost of capital, the prescribed rate of return for Bell's interstate operations shall be 8.74%.

18/ We note that, under Section 1.44(a) of our Rules, petitions to suspend and reject may not be combined into a single pleading, since rejection requests should be addressed to the Chief, Common Carrier Bureau, while suspension motions were properly addressed to us. However, we shall waive Section 1.44(a) on our own motion and consider the pleadings properly before us.

29. IT IS FURTHERED ORDERED, That, for the purpose of this hearing, the parties shall address themselves only to the current cost of capital of AT&T, with particular reference to the cost of equity and to the proper overall rate of return required.

30. IT IS FURTHER ORDERED, That the hearings in this investigation shall be expedited and held at a time and place to be specified by subsequent order and that the Administrative Law Judge appointed to preside at the hearing shall issue an Initial Decision at the close of the record;

31. IT IS FURTHER ORDERED, That the American Telephone and Telegraph Company is made a party respondent in this proceeding, and that all other interested persons wishing to participate may do so by filing a notice of intent to participate within 10 days of the release of this Order;

32. IT IS FURTHER ORDERED, That a separated trial staff will participate in this proceeding pursuant to Section 1.1209(d) of the Commission's Rules;

33. IT IS FURTHER ORDERED, That, for the purposes of tariffs filed pursuant to this Order, the provisions of Sections 61.38 and 61.58 of the Commission's Rules, 47 C.F.R. 61.38, 61.58 ARE WAIVED, as provided herein;

34. IT IS FURTHER ORDERED, That the following procedures will apply in this proceeding:

(a) The record for decision will consist of all matters submitted for the record by responsent, interested persons and the Common Carrier Bureau trial staff. Interrogatories and information requests and responses thereto shall be part of the record. Such submittals together with supporting documentation and workpapers will be available for public inspection as they are received.

(b) All matters submitted for the record, including answers to interrogatories and responses to information requests, must be identified as to sponsoring party, numbered consecutively and identified with the name of a person by whom or under whose supervision the submittal was prepared.

(c) The source of all data must be clearly and specifically noted. Supporting documents which are not readily available and working papers must be presented with the submittals to which they apply. Statistical studies will be submitted and supported in the form preseribed in Section 1.363 of the Commission's Rules.

(d) Original and five copies of all matters submitted for the record as well as of supporting documentation and workpapers must be filed with the Commission. Part I of our Rules governs as to the number of copies for other submissions, such as briefs, pleadings and proposed findings. Matters submitted for the record shall be served on all interested persons filing a notice of intent to participate ("participants") and upon the presiding Administrative Law Judge.

(e) Interrogatories and requests for information must be filed with the Commission and served on the participants to this proceeding. Objections to interrogatories and information requests should be resolved, if possible, by immediate informal conferences between the persons involved and the Trial Staff. If such persons are unable to resolve their differences, the Administrative Law Judge should be notified, and on notification should convene an immediate oral conference of the persons involved. After oral presentations by such persons and the Trial Staff the Judge shall forthwith issue a ruling. Appeals from such rulings shall be governed by 47 CFR Section 1.301 except that the Judge shall set an expedited procedure.

(f) After the return of interrogatories as provided herein, oral evidentiary-type proceedings shall be conducted as may be necessary to elicit on the record such relevant, material and competent information as required for resolution of the issues herein.

35 . IT IS FURTHER ORDERED, That the following schedule will be adhered to:

(a) Within 10 days of the release of this Order AT&T shall identify and file those portions of its material filed in support of the subject tariff revisions which relate to the cost of equity and rate of return issues.

(b) Any participant may file interrogatories and requests for information within 20 days after the filing of the above material by AT&T. Answers to such interrogatories and requests shall be filed within 20 days of the filing thereof.

(c) Within 7 days of the filing of answers to interrogatories and information requests, all parties shall identify the witnesses they intend to call in oral proceedings. Such proceedings shall commence 7 days thereafter.

(d) Proposed findings of fact and conclusions of [illegible] shall be filed within 30 days of the comple[illegible] the oral proceedings, and replies shall be file[illegible]thin 15 days thereafter.

(e) We intend to issue a decision in this matter within nine months of the release of this Order.

36. IT IS FURTHER ORDERED, That the petitions filed herein ARE GRANTED to the extent indicated above and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION*

Vincent J. Mullins
Secretary

*See attached statements of Commissioners Lee, Reid and Hooks.

APPENDIX A

Petitions to suspend and investigate the revisions of Tariff F.C.C. Nos. 259, 260, and 263 were filed by:

The People of the State of California and the Public Utilities Commission of the State of California, on January 31, 1975;

The Commonwealth of Pennsylvania, on January 28, 1975;

The City of Chicago, on January 24, 1975;

The National Small Business Association, on January 28, 1975;

The Executive Agencies of the United States, on January 27, 1975;

Data Transmission Company, on January 28, 1975;

National Data Corporation, on January 28, 1975;

Mutual Broadcasting Systems, Inc., on January 28, 1975;

The Common Carrier Bureau's Separated Trial Staff in Docket No. 19129, on January 28, 1975 (applicable only to revisions of Tariff F.C.C. No. 263 (WATS));

The Intermountain Network, Inc., on January 28, 1975 (applicable only to revisions of Tariff F.C.C. No. 260);

The American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc., on January 28, 1975 (applicable only to revisions of Tariff F.C.C. No. 260 for private line Series 6000 services);

The Council on Wage and Price Stability, on January 23, 1975.

Petitions seeking rejection, cancellation or withdrawal of revisions to Tariffs F.C.C. Nos. 259, 260, and 263 or, as alternative relief, suspension and investigation were filed by:

Aerospace Industries Association of America, Inc., on January 28, 1975;

United Press International, Inc., on January 28, 1975;

Associated Press, on January 28, 1975;

Commodity News Services, Inc., on January 28, 1975;

Air Transport Association of America, on January 28, 1975 (applicable to revisions of Tariff F.C.C. No. 260 for private line Series 5000 (TELPAK) services);

Aeronautical Radio, Inc., on January 28, 1975 (applicable only to Tariff F.C.C. No. 260 for private line Series 5000 (TELPAK) services and filed in Docket No. 18128);

The American Newspaper Publishers Association, on January 28, 1975.

Petitions to reject were filed by:

The American Newspaper Publishers Association, on January 28, 1975;

The Ad Hoc Telecommunications Committee, on January 28, 1975 (applicable only to revisions of F.C.C. Tariff No. 260 for private line services).

Also filed were:

A "Petition to Extend Notice Period" by the American Broadcasting Companies, Inc., CBS, Inc., and National Broadcasting Company, Inc., on January 28, 1975 (applicable only to revisions of Tariff F.C.C. No. 260 for private line Series 6000 service);

AT&T's "Opposition" to the above "Petition to Extend Notice Period", on February 10, 1975;

"Additional Comments on FCC Trial Staff Petition to Suspend" by the American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc., on February 7, 1975;

"Partial Opposition of Microwave Communications, Inc., to Petition of Aeronautical Radio, Inc. (ARINC)", on February 12, 1975;

AT&T's "Reply" (to the petitions requesting suspension, investigation, and in some cases also requesting cancellation, rejection or withdrawal of revisions of Tariff F.C.C. Nos. 259, 260, and 263), on February 5, 1975;

AT&T's "Reply" filed in Docket Nos. 19129 and 18128, on February 10, 1975;

An "Erratum" by Mutual Broadcasting Systems, Inc., on February 4, 1975;

An "Erratum to Petition to Reject Tariff Filing" by the Ad Hoc Telecommunications Committee, on January 31, 1975.

A "Statement of the National Association of Broadcasters in Support of Petition to Extend Notice Period," on February 20, 1975; and

A "Protest - Increase in Rates for Private Line Services" by Volkswagen of America, Inc., on February 21, 1975.

APPENDIX B

James R. Billingsley
Vice President

AT&T
American Telephone and
Telegraph Company
195 Broadway,
New York, N. Y. 10007
Phone (212) 393-1000

January 3, 1975

The Honorable Richard E. Wiley, Chairman
Federal Communications Commission
Washington, D. C. 20554

Dear Chairman Wiley:

The American Telephone and Telegraph Company today is submitting to the Commission a tariff filing seeking increased rates for the Bell System's interstate services, to be effective March 4, 1975. This will be the first increase in interstate rates in over 2 years and only the second time since 1953 that AT&T has found it necessary to seek a general increase in interstate rates. Indeed, interstate rates today are below their 1953 level.

Full justification and documentation for this rate filing is included in the statements and comprehensive supporting data that are being submitted concurrently to the Commission.

These rate adjustments -- designed to produce a 7.2 percent net increase in Bell's interstate revenues -- are of vital importance if the Bell System is to maintain its ability to furnish high-quality, universally available telecommunications services that meet the demands of this nation's consumers. The proposed rate changes are the consequence of the extraordinary inflationary pressures that have been besetting the economy. The impact of this inflationary spiral has been an escalation in the Bell System's labor costs and other operating expenses, a significant rise in the cost of construction needed to provide the plant and equipment required for service to the public, and a dramatic upsurge in interest rates and the cost of capital.

We are now witnessing, in notable examples elsewhere in the economy, the severe and deleterious effects on utility service that come about when the earnings of utilities are inadequate, their ability to raise needed capital is impaired, and their financial integrity is jeopardized. Only by achieving an earnings level attuned to current economic realities can the Bell System continue to provide this Nation with the telecommunications service it demands.

New labor agreements covering Bell System employees, ratified several months ago as a result of collective bargaining, have substantially increased Bell's wage costs. In the first year of these new agreements, wages and employee benefit costs will increase by about 12 percent. Bell's annual wage costs will increase by over $3 billion in the third year, about 32 percent higher than the mid-1974 level. Because only a portion of these higher labor costs can be offset by continued improvements in productivity, it is evident that prompt rate relief is essential.

Without rate relief Bell can achieve no more than an 8.2 percent return on interstate operations for 1975, possibly even lower -- which is below the minimum level the Commission found necessary even under 1972 conditions.

Current conditions in the financial markets have created an urgent need for a level of earnings higher than the Commission allowed in 1972, to enable the Bell System to raise required capital. Bell's construction programs are about $10 billion annually in 1974 and 1975. These construction programs are closely controlled and represent the minimum level of capital expenditures required for efficiently meeting demands for service. Increases in the dollar levels of the construction program in recent years have not resulted from greater construction activity but from the decline in the purchasing power of the dollar.

The financing of construction expenditures of the present magnitude requires attracting about $4 billion per year from the capital markets at a time when the costs of capital have reached levels higher than ever experienced in modern economic history. Failure to attract the needed capital would cause deterioration of service, impairment of efficiency and, ultimately, higher costs of operation.

There have been dramatic changes in financial and economic conditions since the Commission's rate-of-return decision in November 1972. That decision was reached at the time of the National Economic Stabilization program when expectations for the annual rate of inflation were about 3 percent. The rate of inflation in 1974 rose to about 12 percent annually, and the most optimistic forecasts do not envisage that it will be less than 7 percent in the immediate future. Since the last increase in interstate rates 2 years ago, the Consumer Price Index has risen over 20 percent.

These sharp increases in price indices, and widespread expectations for continued increases in the general price level, have had a direct impact on the cost of money, which reached unprecedented heights in 1974. In its 1972 decision, the Commission premised its rate-of-return finding on its expectation that the cost of new Bell System debt would go no higher than 7-1/4 to 7-1/2 percent in the immediately foreseeable future, and that there would be no significant increase in Bell's embedded cost of debt which was then 6 percent.

Today the cost of new capital is sharply higher than the levels of 1972. Interest rates climbed in the latter part of 1974 to the point where short-term debt cost ranged from 10 to 12 percent, Bell's long-term debt costs ranged from 8-3/4 to over 10 percent, and Bell's embedded cost of debt increased steadily. Bell's long-term debt issued in the last six months of 1974 bore interest costs averaging over 9-1/2 percent.

The current cost of equity capital has followed the sharp increase in debt costs, for investors can be attracted only if they can obtain market returns on equity substantially above rates available on more secure debt issues. Despite the increase in AT&T's earnings on book equity to 10-1/2 percent, the price of AT&T common stock has not improved since 1972. This demonstrates that the increase in the earnings level allowed by the Commission in 1972 has been more than offset by the increase in the cost of equity capital in the past two years.

In its 1972 decision the Commission recognized that, in order to attract new common equity on fair terms, the market price of AT&T stock must exceed its underlying book investment. The Commission in 1972 expected that the return it was allowing would permit an improvement in AT&T's unfavorable market/book relationship and facilitate the issuance of new common equity. But presently AT&T common stock is selling considerably below its book value, and urgently needed common equity cannot be issued on terms fair to existing investors.

The issuance of new common equity in the near future is vital to safeguarding the high quality rating for Bell's debt, which rating must be maintained in the increasingly competitive markets for new capital. The overall return allowance we are seeking will restore a post-tax interest coverage of about 3 times, the minimum required to preserve the quality rating of our debt.

These economic and financial circumstances now require an interstate earnings level of 10-1/2 to 11 percent on investment, in order to sustain the financial integrity of the Bell System and to permit the attraction of necessary debt and equity capital under prevailing conditions in the money markets. Accordingly, we are today filing rates designed to produce interstate earnings within that range.

While the effect of rampant inflation has made a general rate increase essential at this time, we are submitting innovative changes in the price structure for long-distance interstate service that will minimize the impact on communications users. This new pricing approach will permit many customers to make calls at less cost than before. Indeed, the prices of about 30 percent of all calls will be lower than at the present time. And by altering their calling habits, customers will have further opportunities for savings in their long-distance calls. These pricing innovations in the newly filed rate schedule promote more

efficient use of the telephone network, facilitate improvements in productivity, and produce substantial cost savings, which benefit the customer by keeping rates lower than they otherwise would be.

The new long-distance schedule is designed to produce a 7.2 percent net increase in the revenue level for interstate Message Telecommunications Service (MTS). The innovations in the schedule, which will permit substantial savings to customers on many calls, involve establishing (1) a one-minute initial period for all customer dialed station calls in all time periods, (2) a 35 percent discount for all customer dialed station calls in the evening rate period and (3) a 60 percent discount for all customer dialed station calls in the night and weekend rate periods. Proportionately larger increases in long-distance rates have been placed on those services where the costs are relatively greater, namely, on person-to-person calls, operator handled station calls, and calls of short mileages.

The new one-minute rate schedule will permit customers to realize substantial savings for calls of short duration. About one-third of all dial station messages are two minutes or less, and with the new rate schedule customers will generally pay less for those calls than they do presently. Further, with the 60 percent discount on all customer dialed station calls during the weekend and night periods, the charges for most of those calls will be lower than at the present.

The following table compares the charges under the new rate schedule for coast-to-coast station calls dialed directly by the customer with those in effect in 1953 and at the present time:

	1953	Present	New	
	(3 min. IP)	(3 min. IP)	(3 min.)	(1 min. IP)
Day	$2.50	$1.45	$1.46	$ .60
Evening	2.00	.85	.94	.39
Night	2.00	.75	.58	.24
Weekend	2.00	.70	.58	.24

"IP" means initial period rate.

Even with the increases now being filed, the level of rates for customer dialed station calls will be lower than they were over 20 years ago. Additional examples of the new rates for dial station and operator assistance calls for various distances are set forth in the tables attached to this letter.

We are also filing rate increases for the other principal categories of interstate service, Wide Area Telecommunications

Service (WATS) and the private line services, in order to achieve the same proportionate increase in the revenue levels for those services as that derived from MTS. The WATS rate changes are designed to maintain approximately the same rate relationships that now exist between WATS and MTS. In view of the pendency of several Commission proceedings relating to the rate structure of the private line services, we are not now filing structural revisions within those services. Rather, for purposes of this overall rate increase filing, we are generally applying the same percentage increase to the various rate elements in the private line services. However, following completion of further studies in this area, including review of competitive conditions with respect to those services, future revisions in the private line rate structure may well be appropriate in a subsequent filing.

The filed rate changes are designed to produce increased revenues from Bell's interstate services of about $717 million per year and, together with associated cost savings, to improve net earnings after taxes by about $433 million per year at the 1975 level of business.

These rate changes are of critical and immediate importance because of the extraordinary financial and economic conditions currently affecting Bell's cost of operations and cost of capital.

Very truly yours,

James P. Bell

Vice President

Attachments

CC: The Honorable Robert E. Lee, Commissioner
The Honorable Charlotte T. Reid, Commissioner
The Honorable Benjamin L. Hooks, Commissioner
The Honorable James H. Quello, Commissioner
The Honorable Glen O. Robinson, Commissioner
The Honorable Abbott M. Washburn, Commissioner
Mr. Walter R. Hinchman, Chief, Common Carrier Bureau

Comparison of Charges Under Schedule I Interstate MTS Rates
Dial Station-to-Station

Washington, D.C. to	DAY				EVENING				NIGHT & WEEKEND			
	1953 3 Min.	PRESENT 3 Min.	NEW 3 Min.	NEW 1 Min.	1953 3 Min.	PRESENT 3 Min.	NEW 3 Min.	NEW 1 Min.	1953 3 Min.	PRESENT* 3 Min.	NEW 3 Min.	NEW 1 Min.
Baltimore	$ .35	$ .40	$ .69	$.33	$ .35	$.32	$.44	$.21	$ .35	$.26	$.27	$.13
Philadelphia	.60	.75	1.05	.45	.45	.50	.68	.29	.45	.46	.42	.18
New York	.80	.80	1.11	.47	.60	.55	.72	.30	.60	.48	.44	.18
Cleveland	1.00	.90	1.17	.49	.75	.55	.76	.31	.75	.50	.46	.19
Detroit	1.10	.95	1.20	.50	.85	.60	.78	.32	.85	.50	.48	.20
Atlanta	1.35	1.05	1.23	.51	1.05	.60	.79	.33	1.05	.50	.49	.20
Chicago	1.40	1.05	1.23	.51	1.10	.60	.79	.33	1.10	.50	.49	.20
St. Louis	1.50	1.15	1.27	.53	1.20	.65	.82	.34	1.20	.50	.50	.21
Dallas	1.90	1.25	1.33	.55	1.50	.70	.86	.35	1.50	.65	.53	.22
Denver	2.05	1.35	1.39	.57	1.65	.75	.90	.37	1.65	.65	.55	.22
Los Angeles	2.50	1.45	1.46	.60	2.00	.85	.94	.39	2.00	.70	.58	.24

DAY RATES

1953 MON-SAT 4:30-6P
PRESENT and NEW MON-FRI 8A-5P

EVENING RATES

1953 MON-SAT 6P-4:30A
PRESENT and NEW SUN-FRI 5P-11P

NIGHT & WEEKEND RATES

1953 SUNDAY ALL HOURS
PRESENT and NEW 11P-8A ALL DAYS*
SAT 8A-11P
SUN 8A-5P

* Night rates presently applicable 11P-8A all days, with a one-minute initial period. Charge for a three minute message is generally the same as Weekend.

Comparison of Charges Under Schedule I Interstate MTS Rates
Operator Station and Person Messages

DAY 3 Minute Initial Period

Washington, D.C. to	Operator Station-to-Station			Operator Person-to-Person		
	1953	Present	New	1953	Present	New
Baltimore	.35	.50	.95	.50	.85	1.40
Philadelphia	.60	.85	1.45	.85	1.30	2.00
New York	.80	.95	1.55	1.10	1.50	2.20
Cleveland	1.00	1.15	1.65	1.40	1.75	2.40
Detroit	1.10	1.25	1.70	1.55	1.90	2.5
Atlanta	1.35	1.35	1.75	1.90	2.15	2.6
Chicago	1.40	1.35	1.75	1.95	2.15	2.6
St. Louis	1.50	1.45	1.80	2.10	2.40	2.8
Dallas	1.90	1.55	1.85	2.65	2.65	2.9
Denver	2.05	1.70	1.90	2.85	3.10	3.1
Los Angeles	2.50	1.85	1.95	3.50	3.55	3.5

DISSENTING AND CONCURRING STATEMENT OF COMMISSIONER ROBERT E. LEE

I am concurring to the extent that the Commission decided today to allow the American Telephone and Telegraph Company (AT&T) to file tariffs increasing its annual revenues of interstate operations by $365,000,000 before taxes. I am dissenting because I believe that this figure could have been increased by another $35,000,000.

The difference is approximately 10 per cent which could be argued as not that substantial; but I feel that an important principle is involved which I will try to explain. The Commission in 1972 set an overall rate of return of 8.5-9.0 per cent on AT&T's interstate operations. The majority of the Commission, at that time, understood that this would permit AT&T a rate of return range up to 9 per cent. We are now advised by the staff that our decision in 1972 has legally bound the Commission to hold AT&T to an 8.5 per ce rate of return. This rate of return has now been increased to 8.7 per cent because of the changed economic conditions that have occurred since 1972 -- i.e., AT&T's current capital structure and its increased cost of imbedded debt. However, for reasons I cannot fathom, such returns cannot be increased any higher than 8.7 per cent.

I am principally concerned because I believe that the Commission as a collegiate body should have wide discretion to meet all emergency matters with respect to telecommunications which includes the present and future state of our nation's economy. At this point, I wish to point out that over the many years that I have served as a Commissioner, our regulation of AT&T has been exemplary. AT&T has developed,under FCC aegis, as one of the worlds finest domestic and international telecommunications systems. I am also aware that under Federal Government regulation this is somewhat unique. One need only look at the financial difficulties besetting our nation's air lines, railroads and electric utilities, as evidence of this fact.

I would dread the day I had to sit in a Commission meeting discussing remedial legislation involving financial emergency relief connected with AT&T's economic viability such as government subsidy or even government ownership.

CONCURRING STATEMENT
OF
COMMISSIONER CHARLOTTE T. REID

I concur with the result of today's decision which, under current circumstances, allows AT&T to increase its rate of return to 8.74 percent and file tariffs increasing its annual revenues from interstate operations by $365 million before taxes. However, in view of the decline in AT&T's earnings over the last quarter of 1974 and recognizing the massive economic readjustment that has occurred since we prescribed AT&T's rate of return at 8.5 percent in 1972, I would have preferred to allow AT&T to increase its rate of return to a rate closer to 9.0 percent. I note that the 9.0 percent figure is the upper limit of a "range of reasonableness" for AT&T's earnings which we sanctioned in our 1972 Decision. In fact, we specifically point out in that Decision that we would consider earnings within this range to be reasonable without regulatory action on our part. 1/

Therefore, I would have supported a rate of return closer to 9.0 percent, allowing AT&T to file tariffs increasing its annual revenue from interstate operation in excess of the $365 million, before taxes, that the Commission approves of today.

1/ See our Decision and Order in Docket No. 19129, 38 FCC 2nd 213 (1972), reconsideration denied, 42 FCC 2nd 293 (1973).

STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS
DISSENTING IN PART; CONCURRING IN PART

RE: American Telephone and Telegraph Co.

The legal mechanics of the result herein reached are confusing. From my perspective, they are also improper and it is to that aspect that my dissent is primarily directed.

The majority contends that our action in Docket 19129, 38 F.C.C. 2nd 213 (1972), formally "prescribed" a rate of return in the range of 8.5% for interstate operations. That rate of return having been "prescribed," it is further asserted that the instant tariff proposal is impermissible in that the rate of return therein specified exceeds that "prescription."

Even assuming that we did "prescribe" something in Docket 19129 1/ it is unlikely that it was the 8.5% rate of return which would seem to be speculative goal predicated on such fluid contingencies as accuracy of traffic predictions, cost of capital, etc. A rate of return, therefore, does not seem readily amendable to finite "prescription." Instead, the "prescription" (if any) would have been the "charges" underlying the subject rate of return; and, in this respect, my notion is confirmed by the clear language of our statutory "prescription" authority which states that "the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum or maximum and minimum charge or charges to be thereafter observed . . . ." 47 U.S. C. §205 (a) (Emphasis added). 2/

Secondly, and again arguendo, even if we did "prescribe" something in Docket 19129, it is not clear that a proceeding other than that ordained in §204 is the appropriate way of modifying that "prescription." It has always been my comprehension that, under our statutory scheme, new

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1/ This assumption is tenuous at best because a throughgoing review of our Order, supra, therein yields absolutely no indication of a formal "prescription." But see, 42 FCC 2d 293 at 300 (where the term is used for the first time).

2/ Other language in §205(a) authorizes prescription of a fair and reasonable "classification, regulation or practice" of a carrier. But, no liberal interpretation of those three terms of art can be equated to a "rate of return". Also, we have told the court that our action in Phase I of Docket 19129 "was not prescribing rates within the meaning of §205." Nader v. FCC, FCC Br., p. 54, (D.C. Cir. Nos. 73-1045, 73-2051). Finally, if there has been a "prescription", I believe it could not be modified "without full opportunity for hearing". 47 U.S.C. §205, which hearing is provided for in §204.

rates or charges are ordinarily initiated by a carrier tariff filing and that our authority, thereafter, is as enunciated in §204. See, e.g., Associated Press v. FCC, 448 F. 2d 1095 (D.C. Cir. 1971). "There is no regulatory authority granted to the Commission by virtue of its power to regulate the communications and broadcasting industry which permits it to circumvent the statutory plan of carrier initiated rate changes, a limited suspension period, rate refunds and rate prescriptions only after a full hearing and specific findings." American Telephone and Telegraph Co. v. FCC, 487 F2d 864, (2d Cir. 1973). Thus, I view the process as cyclical and carrier initiated changes from a §205 "prescription" lead right back to §204.

However, if the majority's interpretation is correct, then the disposition, based on current conditions, which flows therefrom is appropriate and serves the public interest. To that disposition then, and notwithstanding my reservation as to the mechanics, I concur.

AT&T Long Lines
32 Avenue of the Americas
New York, N. Y. 10013
Phone (212) 393-7277

W. E. Albert
Administrator Rates and Tariffs

January 3, 1975

Transmittal No. 12241

Secretary
Federal Communications Commission
Washington, D. C. 20554

Attention: Common Carrier Bureau

The accompanying tariff material is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended, issued by the American Telephone and Telegraph Company, Long Lines Department, and bearing Tariff F.C.C. Nos. 259, 260, and 263 effective March 4, 1975, except as otherwise indicated therein. This material consists of revised tariff pages as indicated on the following check sheets:

Tariff F.C.C. No.	Check Sheet Revision No.
259	128th Page 1
260	1464th Page 1 679th Page 1.1 112th Page 1.2
263	711th Page 1

This filing provides for tariff changes that will result in generally increased rate levels applicable to: (1) Long Distance Message Telecommunications Service (MTS), furnished within the United States (except Hawaii and Alaska) and between the United States (except Hawaii and Alaska) and Canada and Mexico; (2) Wide Area Telecommunications Service (WATS); and (3) Private Line Service.

The substantive reasons for this filing are reviewed in the letter, dated January 3, 1975, from Mr. J. R. Billingsley of AT & T to the Chairman of the Commission. A copy of this letter is attached to this transmittal. These rate adjustments constitute about a 7.2 percent net increase in Bell's interstate revenues. Based on estimates of operations for the 12 months ending December 31, 1975, the rate changes are estimated to produce additional revenues (after uncollectibles and settlements) of $717 million on a 1975 basis annualized. The net effect of the rate changes is estimated to be an improvement in net earnings after federal income taxes in the amount of $433 million per year at the 1975 level of business.

A summary of the rate changes is attached. Pursuant to Section 61.38(d) of the Commission's Rules, there are submitted with this filing documents containing data in justification of the rate changes. Bell Statements 1 through 5 pertain to the Bell System's capital requirements, interstate rate of return, and interstate operating results. Bell Statement 6 reviews the rate adjustments and the basis of ratemaking employed. In addition, there are submitted 29 volumes of material containing traffic, revenue, cost, and other data, with the supporting workpapers, applicable to this tariff filing. The Bell statements and other data are enumerated in an attached list.

The domestic MTS, WATS and Private Line Service revisions are being filed to become effective March 4, 1975. The revisions in MTS rates for U. S. - Canada and U. S. - Mexico are being filed to become effective March 29, 1975 in order to provide sufficient time for the Canadian and Mexican correspondents to arrange for implementation of the new rate schedules in their countries.

Notification to customers of the changed MTS tariff material contained in this filing is being made through advertisements scheduled to appear during the next several days in all general circulation daily newspapers throughout the country with over 7,500 in circulation. The text of the advertisement is attached. In addition, news releases have been distributed to the press associations and to major radio and television networks. This form of notification was selected with the expectation that virtually the entire population would be covered. Notification to WATS and Private Line customers is being made through a letter to each affected customer.

Acknowledgment and date of receipt of this filing are requested. A duplicate letter of transmittal is submitted for this purpose. All correspondence and inquiries in connection with this filing should be addressed to Mr. W. E. Albert, Administrator Rates and Tariffs, American Telephone and Telegraph Company, 32 Avenue of the Americas, New York, New York 10013.

W. E. Albert

Administrator Rates and Tariffs

Attachments:
- Duplicate Transmittal Letter
- Letter, dated January 3, 1975, from Mr. J. R. Billingsley to the Chairman of the Commission
- Summary of Rate Changes
- List of Bell Statements and Other Materials
- Tariff Pages
- Illustrative Advertisement
- Illustrative Letter to WATS Customers
- Illustrative Letter to Private Line Customers

Copy of Letter and Tariff Pages sent to:
Commercial Contractor

SUMMARY OF RATE CHANGES

MESSAGE TELECOMMUNICATIONS SERVICE

Intra United States (Except Alaska & Hawaii) Schedule I

1. A one-minute initial period will apply to all Dial Station-to-Station messages.

The one-minute initial period will result in a reduction in charges for all Dial Station-to-Station messages during Day, Evening and Weekend hours that are 1 minute or less in duration for all mileage bands and for messages that are 2 minutes or less for all mileage bands over 148 miles.

Based upon a 3 minute comparison, Day Dial Station-to-Station charges will be increased by 11 cents for a message of 1-10 miles and range up to an increase of 36 cents for a message of 71-85 miles. A message of 86-100 miles will be increased by 34 cents and the increase will then taper down to 1 cent for messages of distances over 1910 miles.

2. Discounts during the Evening and Night & Weekend rate periods will apply to the total charge for Dial Station-to-Station messages and to the additional minute charge for Operator Station-to-Station and Person-to-Person messages.

During the Evening rate period, the discount will be 35 percent, generally larger than the present reduction for messages over distances up to 244 miles. This discount is somewhat less than the present level of reduction for messages over distances of more than 244 miles.

During the Night & Weekend rate period the discount will be 60 percent which represents a larger discount over all distances than is applied at present for a 3 minute message during these rate periods.

3. A uniform 24-hour rate for an initial 3-minute period will apply for all Operator Station-to-Station messages.

For Operator Station-to-Station messages the initial period Day Rate will be increased by amounts ranging from 15 cents at 1-10 miles to 60 cents at 86-244 miles; the increase will be 55 cents at 245-292 miles, tapering down to a 10 cent increase at 1911-3000 miles. The present Evening, Night & Weekend rates will be increased by amounts ranging from 15 cents at 1-10 miles up to 70 cents at 431-925 miles; the increase will be 65 cents at 926-1360 miles and will then taper down to 55 cents at 1911-3000 miles.

For Person-to-Person messages, the initial period rate for all rate periods will be increased by amounts ranging from 20 cents at 1-10 miles up to 70 cents at 101-292 miles; the increase will be 65 cents at 293-354 miles and will then taper down to a 30 cent increase at 926-1360 miles. The rate will remain the same above 1360 miles.

4. Common additional minute rates will apply for all classes of service.

Dial Station-to-Station Day additional minute rates will be increased by amounts ranging from 1 cent at 1-10 miles up to 10 cents at 71-85 miles. The additional minute rates will be increased 9 cents at 86-100 miles and the increase will then taper down to 2 cents at 676-925 miles. The rates will remain the same at 926-1360 miles and will be decreased by 1 cent at 1361-1910 miles and 3 cents at 1911-3000 miles.

Dial Station-to-Station Evening additional minute charges will be slightly reduced at 1-10 miles and will be increased by amounts ranging from 1 cent at 11-16 miles up to 9 cents at 86-100 miles; the increase will then taper down to 3 cents at 1911-3000 miles.

Dial Station-to-Station Night & Weekend additional minute charges will be increased by amounts ranging up to 2 cents between 23 and 124 miles and will be reduced by amounts ranging up to 5 cents for the remaining mileage bands.

Operator Station-to-Station and Person-to-Person Day additional minute rates will remain the same from 1-10 miles and at 926-1360 miles. They will be decreased by 1 cent and 3 cents at 1361-1910 and 1911-3000 miles, respectively. The additional minute rates will increase by amounts ranging from 1 cent at 11-16 miles up to 9 cents at 101-124 miles, and the increase will then taper back down to 2 cents at 676-925 miles. Operator Evening additional minute rates will be reduced in the range of 1 to 4 cents between 1 and 55 miles and slightly less than 1 cent at 676-925 miles. The remaining mileage bands rates will be increased in the range of 1 to 5 cents. Operator Night & Weekend additional minute rates will be reduced in all mileage bands in the range of 3 to 9 cents.

U.S.-Canada - Schedule II

1. A Dial Station-to-Station rate will be established for the Day and Evening rate periods, in addition to the present Dial Station-to-Station Night rate period. A one-minute initial period rate will be established for all time periods with a $.10 minimum charge per message.

2. Discounts will be established at 35 percent for the Evening and 60 percent for the Night rate period, applicable to Dial Station-to-Station initial periods and additional minutes for all classes of service.
3. A uniform 24-hour rate for an initial 3-minute period will be established for all Operator Station-to-Station and Person-to-Person messages.
4. Common additional minute rates will be established for all classes of services.
5. The number of mileage rate steps will be reduced from 27 to 23.
6. The fifteen cent surcharge for collect calls will be eliminated.
7. A Night discount rate period will be established for additional minutes for Operator Station-to-Station and Person-to-Person messages. The Night reduced rate period will be extended from 6AM to 8AM.
8. Increases in charges by call class will be as follows:

Dial Station-to-Station

(Present 3-minute initial period rate compared to new 3 minute charge)

Day -	$.03 to $.21	from mile 1 through 1050
Evening -	$.03 to $.08	from mile 1 to 8 and 66 through 530

Operator Station-to-Station

Day -	$.15 to $.40	from mile 1 through 750
	$.05 to $.25	from mile 751 through 1880
Evening -	$.15 to $.55	from mile 1 through 140
	$.60 to $.90	from mile 141 to end of schedule

Person-to-Person

Day -	$.40 to $.90	from mile 1 through 345
	$.50 to $1.15	from mile 346 to end of schedule

Evening -	$.40 to $.90	from mile 1 through 140
	$1.00 to $1.70	from mile 141 to end of schedule

Additional Minute

Day -	$.025 to $.11	from mile 1 through 1880
	$.005	from mile 1 through 8
	$.01	from mile 19 through 24
	$.01 to $.03	from mile 51 through 80
	$.01 to $.06	from mile 111 through 530
Night -	$.02	over mile 2220

9. Reductions in charges by call class will be as follows:

Dial Station-to-Station

(Present 3-minute initial period rate compared to new 3 minute charge)

Day -	$.04 to $.25	from mile 1051 to end of schedule
Evening -	$.01 to $.05	from mile 9 through 50
	$.02 to $.36	from mile 531 to end of schedule
	No Change	from mile 51 to 65
Night -	$.02 to $.18	from mile 1 through 2220
	No Change	over mile 2220

The one-minute initial period will result in reductions in charges for all messages of 2 minutes or less, except for those occurring in the following mileages.

Day, Evening, Night -	mile 1 through 8
Day -	mile 9 through 24 and mile 66 through 80

Operator Station-to-Station

Day - No change from mile 1881 to end of schedule

Additional Minutes

Day -	$.04 to $.05	from mile 1881 to end of schedule
Evening -	$.02	from mile 9 through 13
	$.01 to $.03	from mile 25 through 40
	$.01 to $.06	from mile 631 to end of schedule
	No Change	from mile 14-18; 41-50; 81-110 & 531-630
Night -	$.005 to $.06	from mile 1 through 430
	$.01 to $.06	from mile 531 through 1610
	No Change	from mile 431-530 and 1611-2220

U.S.-Mexico - Schedule III

1. A Simple Station Rate Class will be established for all hours of the day and all days of the week. Simple Station Service will apply to station messages dialed by the customer or station messages that could be dialed by the customer if facilities were available.
2. A uniform 24-hour rate will be established for the initial 3-minute period for all Person-to-Person messages.
3. A common additional minute rate will be established for all call classes beginning at 245 miles for Day calls and 86 miles for Evening calls.
4. The number of mileage rate steps will be reduced from 27 to 21.
5. The surcharge for collect calls will be eliminated.
6. The Evening rate period will be changed from 8PM to 11PM, and the Night rate period will be extended to 8AM.
7. Increases in rates by call class will be as follows:

   Initial 3-Minute Period - Simple Station

   Day - $.0375 to $.15 from mile 1 through 268

Evening -	$.0175 to $.15	from mile 1 through 316
Night -	$.05 to $.15	from mile 56 through 3000

Initial 3-Minute Period - Operator Station-to-Station

Day -	$.05 to $.20	from mile 1 through 3000
Evening -	$.0875 to $.30	from mile 1 through 3000
Night -	$.0875 to $.45	from mile 1 through 3000

Initial 3-Minute Period - Person-to-Person

Day -	$.15 to $.45	from mile 1 through 3000
Evening -	$.30 to $.70	from mile 1 through 3000

Additional Minute - Simple Station

Day -	$.025 to $.03	from mile 1 through 55
	$.02 to $.04	from mile 71 through 244
	$.02	from mile 293-316; 431-506 & 1361-1910
	$.01	from mile 1911 through 3000
Evening -	$.015	from mile 1 through 10
	$.01 to $.04	from mile 23 through 148

Additional Minute - Operator Station to Station

Day -	$.01 to $.03	from mile 1 through 22
	$.02 to $.05	from mile 31 through 220
	$.01 to $.02	from mile 293 to 316 and 926 to 3000
Evening -	$.01 to $.03	from mile 1 through 22
	$.05	from mile 31 to 100 and 149 to 220

8. Reductions in rates by call class are as follows:

Initial 3-Minute Period - Simple Station

Day -	$.05	from mile 317 to 354 and 393 to 430
	$.10	from mile 507 to 3000
	No change	from mile 269-316; 355-392 & 431-506
Evening -	$.05 to $.10	from mile 926 through 3000
	No change	from mile 317 through 925
Night -	$.0025	from mile 1 through 10
	No change	from mile 11 through 55

Additional Minute - Simple Station

Day -	$.01 to $.03	from mile 317-430; 507-675 & 926-1360
	No change	from mile 56-70; 245-292 & 676-925
Evening -	$.05	from mile 355-675 & 1361-3000
	No change	from mile 11-16; 41-55; 101-148; 221-354 and 676-1360
Night -	$.05	from mile 355-675 and 1361-3000
	No change	from mile 17-22; 149-354 and 676-1360

Additional Minute - Operator Station or Person

Day -	$.01 to $.03	from mile 317 through 675
	No change	from mile 23-30 and 221-292 and 676-925
Evening -	$.05	from mile 355-676 and 1361-1910
	$.10	from mile 1911 through 3000
	No change	from mile 23-30; 101-148; 221-354 & 676-1360

WIDE AREA TELECOMMUNICATIONS SERVICE

1. Monthly rates for measured time service will be increased for distances up to 900 miles. Monthly rates for measured time service will be decreased for distances beyond 900 miles.

Initial period (first 10 hours) rates will be increased from $5 to $41 at distances up to 900 weighted miles with the higher amounts occurring at the shorter distances. Beyond 900 weighted miles, rates will be decreased ranging up to $25 at the longest distance. Additional hour rates will be changed to maintain the 75 percent rate relationship between the additional hour and the equivalent initial period per hour rates.

2. Monthly rates for Full Business Day Service will be increased for distances up to 1600 miles, and monthly rates for Full Business Day Service will be decreased beyond 1600 miles.

Initial period (first 240 hours) rates will be increased, ranging from $195 at the shortest distance to a maximum increase of $335 for 401-500 weighted miles and then to a minimum increase of $4 for 1401-1600 weighted miles. Rates for more than 1600 weighted miles will be decreased, ranging up to $10 at the longest distance. Additional hour rates will be adjusted to maintain the two-thirds rate relationship between the additional hour and the equivalent initial period per hour rates.

3. With the exception of installation, move and conversion charges for WATS and extension stations, all other rates and charges in Tariff F.C.C. No. 259 (e.g., monthly rates and installation charges for connecting arrangements) will be increased 7.8 percent and rounded in the same manner as the equipment rates for Private Line Service.

DOMESTIC PRIVATE LINE SERVICES

All domestic rate elements in Tariff F.C.C. No. 260 will be increased 7.8 percent, with the exception of the rates for Series 7000 services and for any items that were filed to become effective after September 1, 1974. After application of the 7.8 percent increase, each rate element, with the exception of rates for interexchange channel mileage, will be rounded to the nearest five cents for items up to $100.00 and to the nearest dollar for items of $100.00 or more. Rates for Series 5000 and 8000 base capacity will be rounded to the nearest five cents while all other interexchange channel mileage rates will be rounded to the nearest cent.

LIST OF BELL STATEMENTS AND OTHER MATERIALS BEING SUBMITTED WITH JANUARY 3, 1975 TARIFF FILING

(Transmittal No. 12241)

BELL STATEMENTS

(1) 1. Bell System Capital Requirements

(2) 2. Bell System Interstate Operating Results

(3) 3. Statement of J.J. O'Leary

(4) 4. Statement of R.H. Baldwin

(5) 5. Rate of Return on Bell System Interstate Operations

(6) 6. Description of Interstate Rate Adjustments and Basis of Ratemaking Employed

OTHER MATERIALS

(7) Traffic and Revenue Data Volume 1 - Summary
(Estimates of the Effects of Rate Changes on Traffic and Revenue)

(8) Traffic and Revenue Data Volume 2
(Description of Interstate Message Telecommunications Demand Model)

(9) Traffic and Revenue Data Volume 3
(Explanation of the Basis for Estimates of the Effects of the 1974 MTS Rate Change Upon MTS Traffic and Revenue)

(10) Traffic and Revenue Data Volume 4
(Explanation of the Basis of the Estimates of the Effects of WATS Rate Revisions on Traffic and Revenue)

(11) Traffic and Revenue Data Volume 5
(Explanation of the Basis for Estimates of the Effects of the Rate Changes on Traffic and Revenue of Private Line Services)

(12) Traffic and Revenue Data Volume 6
(Description of Procedures for Cross-Elasticity Estimates)

(13) Traffic and Revenue Data Volume 7
(Workpapers Related to Interstate MTS Model Process Flow Chart and Computer Program)

(14) Traffic and Revenue Data Volume 8
(LDI Workpapers)

(15) Traffic and Revenue Data Volume 9
(Computations and Related Workpapers for WATS)

(16) Traffic and Revenue Data Volume 10
(Workpapers Source Data and Detailed Description of Procedures Associated with the Estimates of the Effects of the Rate Change on Traffic and Revenue of the Private Line Services)

(17) Traffic and Revenue Data Volume 11
(U.S.-Canada and U.S.-Mexico Message Telecommunications Service Rate Change Traffic and Revenue Data)

(18) Cost Data Volume 1
(Results of Cost Studies)

(19) Cost Data Volume 2
(Incremental Network Costs (INC) System)

(20) Cost Data Volume 3
(Pri ·ate Line Service Studies for the Years 1975, 1976 and 1977)

(21) Cost Data Volume 4
(Cost of Service Study for 12-Month Period Ended August 31, 1974)

(22) Cost Data Volume 5
(1975 INC System Cost Data Workpapers)

(23) Cost Data Volume 6
(1976 INC System Cost Data Workpapers)

(24) Cost Data Volume 7
(1977 INC System Cost Data Workpapers)

(25) Cost Data Volume 8
(Incremental Network Costs (INC) System Computer Program Listings - Steps 5 through 10)

(26) Cost Data Volume 9
(Incremental Network Costs (INC) System Computer Program Listings - Steps 11 through 14)

(27) Cost Data Volume 10
(Incremental Network Costs (INC) System Computer Program Listings - Step 15)

(28) Cost Data Volume 11
(Incremental Network Costs (INC) System Computer Program Listings - Steps 16, 17 & 20)

(29) Cost Data Volume 12
(Incremental Network Costs (INC) System Computer Program Listings - Steps 18, 19 & Runstreams)

(30) Cost Data Volume 13
(Private Line Incremental Annual Costs (PLIAC) Computer Program Listings)

(31) Cost Data Volume 14
(1975 U.S.-Canada and U.S.-Mexico Cost Data Workpapers)

(32) Cost Data Volume 15
(1976 U.S.-Canada and U.S.-Mexico Cost Data Workpapers)

(33) Cost Data Volume 16
(1977 U.S.-Canada and U.S.-Mexico Cost Data Workpapers)

(34) Workpapers Associated with Bell Statement 2

(35) Workpapers Associated with Bell Statement 5

NOTICE TO TELEPHONE CUSTOMERS

Faced with the same inflationary problems as you...

We are requesting changes in interstate Long Distance rates

• Most calls will be higher.
• Some calls will be cheaper.
• But all customers can save.

The American Telephone and Telegraph Company has filed a new rate schedule with the Federal Communications Commission which will increase charges for most out-of-state Long Distance calls.

A new, lower minimum price and uniform discounts of 35 and 60 per cent will also be introduced for many dial-direct calls placed without an operator.

About 30 per cent of all interstate Long Distance calls will cost customers less. About 70 per cent will cost more. The new rates, which must be fully justified to the FCC, are intended to produce an increase in interstate revenues of 7.2 per cent.

The new rates are filed to become effective on March 4, 1975.

Here are the specific provisions in the new rates:

1. On dial-direct calls (those dialed without an operator) the initial rate period any time of the day or night will now be one minute, rather than three minutes. Since more than one third of all interstate Long Distance dial-direct calls are now two minutes or less, this will represent a significant saving for many telephone customers.

2. The number of rate periods will be reduced from four to three. "Weekday" rates will apply from 8 a.m. to 5 p.m. Monday through Friday. "Evening" rates will apply from 5 p.m. to 11 p.m. Sunday through Friday. "Night & Weekend" rates will apply from 11 p.m. to 8 a.m. every night, all day and night Saturday, and all day and night Sunday, except 5 to 11 p.m.

3. The new rates feature a uniform 35 per cent discount during the "Evening" time period on the first minute and each additional minute for calls dialed direct without an operator. There will be a uniform 60 per cent discount during the "Night & Weekend" time period on the first minute and each additional minute for calls dialed direct without an operator. (See rate box at right.)

4. The initial period for all calls placed with an operator will remain at three minutes. The initial period charge for these calls will be the same 24 hours a day, seven days a week. (Calls placed with an operator include person-to-person, credit card, collect, coin, hotel-guest, or calls billed to a third number.)

5. All additional minutes will be charged at the same low dial-direct rate, and will include the discount applicable to the time period when you call. This means that the higher initial rate for operator-assisted station-to-station and person-to-person calls will apply only to the first three minutes of these calls.

6. Charges for certain Private Line services and Wide Area Telecommunications Service will be increased.

7. Charges on most Long Distance calls to Canada and Mexico will be increased, effective March 29, 1975.

Despite a steady increase in the cost of living over the past two decades, this is only the second request for a general interstate rate increase by AT&T in the last 21 years. During that same period interstate Long Distance rates have been reduced nine times. Even with the proposed increases, many Long Distance calls will cost less than they did in 1953. In the same period, the Consumer Price Index has risen 91.3 per cent.

These rate increases are the result of the enormous inflationary pressures that are besetting the economy.

Last August, the Bell System signed an employee wage settlement amounting to well over $3 billion during the next three years. The level of construction expenditures that provides the plant and equipment required for good quality service to the consumer has also risen significantly, reaching $10 billion in 1974. And there has been a dramatic upsurge in the cost of capital that must be attracted in order to finance this construction program.

Although there will be an increase in total revenues, the proposed rates have been designed so telephone customers can take advantage of discounts by dialing their own calls when Long Distance circuits are less busy. By shifting calls to off-peak hours, Bell System operating expenses and capital expenditures, which have been so heavily influenced by inflation, can be held to an absolute minimum. The savings which result will benefit all Bell System customers.

PROPOSED RATES FOR COAST-TO-COAST INTERSTATE CALLS

(Lower rates apply on shorter distances.)

DIAL-AND-SAVE ONE MINUTE RATES

FULL RATE	35% DISCOUNT	60% DISCOUNT
WEEKDAY	EVENING	NIGHT & WEEKEND
Monday-Friday 8 a.m.-5 p.m.	Sunday-Friday 5 p.m.-11 p.m.	Every night 11 p.m.-8 a.m. Saturday—day and night Sunday—day and night except 5 p.m. to 11 p.m.
First Minute 60¢	First Minute 39¢	First Minute 24¢

Additional minutes cost less than the first minute.

Dial-direct rates apply on all interstate calls (excluding Alaska) completed from a residence or business phone without operator assistance. They also apply on calls placed with an operator from residence or business phone where dial-direct facilities are not available. For dial-direct rates to Hawaii, check your operator. Dial-direct rates do not apply to person-to-person, coin, hotel-guest, credit card or collect calls, or to calls charged to another number, because an operator must assist on such calls.

OPERATOR-ASSISTED THREE MINUTE RATES

STATION-TO-STATION	PERSON-TO-PERSON
Full rates apply at all times	Full rates apply at all times
First 3 minutes $1.95	First 3 minutes $3.35

Additional minutes same as dial rate. Applicable discounts apply to additional minutes during "Evening" and "Night & Weekend" periods.

NOTE: Rates quoted do not include tax.

AT&T

This is reduced from actual size, which will be 7½ x 14½ 12/30/74

For the information of our WATS customers:

The American Telephone and Telegraph Company has filed with the Federal Communications Commission for generally higher rates for interstate Wide Area Telecommunications Service (WATS), to become effective March 4, 1975. Interstate WATS rates charged by the Independent Telephone Companies also will be affected. The revised rates are part of a general interstate rate adjustment that also provides proportionate revenue changes in interstate Message Telecommunication Service and Private Line Services.

We do not like to raise our rates anymore than you like to pay the increase, but quite simply, we are trying to cope with the same problem that you are facing -- and that problem is inflation. We need these rate adjustments to help offset the intense inflationary pressures which are significantly impacting on our labor and construction costs and on the cost of the capital we need to maintain, expand and improve the communications services that we provide. Revenues realized from these changes will help insure that you continue to receive the high quality telecommunications services that you require and that you have every right to expect.

Basically, the proposed changes involve:

Measured Time Service

Monthly rates for access lines for calls up to about 900 miles will increase $5-$41 while monthly rates for lines for calls over about 900 miles will have decreases of $2-$25. Additional hourly rates will be adjusted accordingly.

Full Business Day Service

Monthly rates for access lines for calls up to about 1600 miles will increase $4-$335. Over about 1600 miles they will decrease $2-$10. Additional hourly rates will be adjusted accordingly.

The rate adjustments between shorter and longer mileages will more accurately reflect the actual cost of providing these services.

If you would like to review the effect of these rate revisions on your present WATS service or if you have any questions, your telephone company representative will be available, as always, to assist you.

For the information of our Private Line customers:

The American Telephone and Telegraph Company has filed with the Federal Communications Commission for generally higher rates for interstate Private Line Services, to become effective March 4, 1975. Private Line rates charged by Bell System Telephone Companies and certain Independent Telephone Companies--those that participate in AT&T Tariff FCC No. 260--will be affected. The revised rates are part of a general interstate rate adjustment that also provides proportionate revenue changes in interstate Message Telecommunications Service and Wide Area Telecommunications Service (WATS).

We do not like to boost our rates any more than you like to pay the increase but, quite simply, we are trying to cope with the same problem that you are facing--and that problem is inflation. These rate adjustments are necessary to help offset the intense inflationary pressures which are significantly impacting on our labor and construction costs and on the cost of the capital we need to maintain, expand and improve the communications services that we provide. Revenues realized from these changes will help insure that you continue to receive the high quality telecommunications service that you require and that you have every right to expect.

Basically, the proposed changes provide for an across-the-board 7.8 percent increase in rates for most interstate Private Line Services furnished under Tariff FCC No. 260. Rates for Overseas Services, Series 7000 (Television) Services and for any items that were filed to become effective after September 1, 1974 will not be modified by this rate adjustment.

If you would like to review the effect of these revisions on your present Private Line Service or if you have any questions, your Telephone Company representative will be available to assist you.

F.C.C. TARIFF FILING JANUARY 3, 1975
Bell Statement 5

RATE OF RETURN ON BELL SYSTEM INTERSTATE OPERATIONS

The purpose of this statement is to show the level of earnings required on the Bell System's interstate operations under current financial and economic conditions. This statement will review the significant changes that have occurred since the Commission's Decision and Order in Phase I of Docket No. 19129, adopted November 22, 1972, and will demonstrate the need for a substantial increase in the level of Bell's rate of return above that found appropriate in the 1972 Decision.

The rate of return allowed by the Commission's Decision in 1972 is clearly inadequate under current conditions. The impact of severe competition for capital, the dramatic increase in the rate of inflation, and, more importantly, expectations of continued inflationary levels higher than evident during Phase I of Docket No. 19129 have resulted in capital costs higher than ever before in modern economic history. These conditions have increased Bell's required return well above the levels necessary in the 1971-72 period. Further, the greater emphasis on the financial integrity of firms seeking capital, coupled with the pronounced increases in capital requirements for several sectors of the economy, makes it essential that earnings levels be compatible with today's conditions.

BACKGROUND

In its 1972 Phase I Decision, the Commission concluded that the range of reasonableness for the fair rate of return on Bell's interstate and foreign communications services was 8-1/2 to 9 percent under then-current economic and financial circumstances; and it allowed Bell to increase its interstate rates so as to improve its earnings to 8-1/2 percent, the lower part of the range. The Commission found that an 8-1/2 percent return was the minimum then required to enable Bell to attract capital at a reasonable cost and to maintain its credit, to assure continued and adequate communications service to the public, and to meet future requirements for communications service.

The Commission determined an 8-1/2 percent minimum rate of return on the basis of a capital structure with 45 percent debt and 55 percent equity. The Commission found that Bell's embedded cost of debt at the time was 6 percent and that its minimum cost of total equity capital was then 10-1/2 percent.

The Commission's findings, upon which its rate of return conclusion was premised, reflected its view of financial and economic conditions as of the latter part of 1972. The Commission found that the current cost of new debt was "an important factor in determining for the immediate future both the embedded cost of debt and the current cost of common equity," and "the cost to Bell of long-term debt for the present, and in the immediately foreseeable future, is and will be in the range of 7-1/4 to 7-1/2 percent." (38 FCC 2d at 230-31). As shown later in this statement, the current cost of long-term debt has risen well above that level.

The Commission concluded in 1972 that it did not anticipate any significant rise in Bell's embedded cost of debt in the near future. It stated that "in the case of Bell, the amount of new debt which Bell may be reasonably expected to issue in the immediately foreseeable future at rates higher than the aforementioned embedded cost of 6 percent would not significantly increase Bell's embedded debt cost because of the large amount of long-term debt already outstanding and the limited amount of refunding required for maturing low cost debt." (38 FCC 2d at 230). Bell's embedded cost of debt has in fact continued to rise steadily since 1972.

In its 1972 decision the Commission supported maintenance of Bell's current credit rating, and recognized the importance of marketing AT&T stock at proceeds above book value and the need for equity earnings that would achieve market-to-book levels sufficient to do so. The Commission stated that it believed the return it was allowing on equity would improve the poor market/book relationship on AT&T common stock and enable Bell to issue stock on reasonable terms, thus assuring availability of capital and protection of the quality rating on its debt securities. Nevertheless, as we shall show, AT&T's market/book relationship has fallen even further; and continued heavy reliance on debt has put Bell's quality rating in jeopardy. Current financial and economic conditions are significantly different from those upon which the Commission relied in 1972, and require earnings substantially above the level the Commission then found appropriate to generate the market/book relationship which will permit the issuance of new common equity on fair terms.

The Commission's 1972 Decision was reached at the time of the national economic stabilization program, when many economists felt that the inflationary spiral was abating. The goal of this program was to get the rate of inflation down to a level of 2 to 3 percent by the end of 1972. (Ann. Rep. of Council of Economic Advisers (1973), p.54). However, as is generally known, the rate of inflation was only temporarily moderated by that program and has since increased well beyond the prior highs of 1969-70. Expectations for future inflation are currently well above 1972 levels, and the cost of capital has risen commensurately.

Attachment A summarizes the significant changes that have occurred since November 1972 in a number of critical economic and financial factors. The remainder of this statement will review the many changes that require an increase in Bell's interstate earnings level. Specifically, this statement will review the continued inflationary spiral in recent years, the increase in interest rates and Bell's cost of debt since the latter part of 1972, and the impact of these events on Bell's ability to maintain the integrity of its investment and to attract new debt and equity capital. We shall show that the level of total book equity returns currently required is 13-1/2 to 14-1/2 percent, and that the overall rate of return now required to attract capital and maintain the integrity of existing investment is 10-1/2 to 11 percent.

This statement's analysis of the interstate earnings level necessary under present economic and financial conditions does not reflect the impact of the recently filed Federal antitrust action against the Bell System. It is too early to evaluate the extent to which the pendency of that case will

affect investors' appraisals of the market risks of AT&T, i.e., how much this circumstance might increase Bell's cost of capital above that level set forth in this statement.

INFLATION

Attachment B, page 1, indicates the recent trends in inflation as measured by the Consumer Price Index (CPI), the Wholesale Price Index (WPI), and the Gross National Product (GNP) Deflator. All of these measures depict a similar pattern for the period indicated. Page 2 of Attachment B indicates that inflation had been steadily increasing since 1965 and at the outset of Phase I of Docket No. 19129 the annual increase in the CPI was 5.5 percent. Except for the 6.1 percent increase in 1969, this was the highest percentage change since 1951. Moreover, the trend since 1965 suggested that the 1.4 percent average yearly increase of the late 1950's and early 1960's might be extremely difficult, if not impossible, to attain again. It was generally accepted in Phase I that this dramatic change in the rate of inflation played a significant role in the increases in Bell's cost of capital.

During the hearings in Phase I, there was general optimism that inflation could be significantly reduced; and the return levels discussed by Bell's witnesses envisioned a moderation in inflation rates. Indeed, such a moderation appeared to be taking place early in 1971; and the President's actions under the Economic Stabilization Act of 1970 served to continue this trend through 1971 and 1972, as the rate of change in the CPI fell from the 1969 high of 6.1 percent to 3.4 percent in both 1971 and 1972. At the end of 1972, when the Commission reached

its Phase I decision, the annual rate of increase in the CPI was about 3 percent.

This reduction in the inflation rate was induced to a great extent through the various phases of price controls under the Economic Stabilization Act. But with the removal of each phase, the true inflationary impact of current economic circumstances re-emerged. This phenomenon was not well recognized at the time, however. Early forecasts of inflation for 1973 ranged from an optimistic 3.0 percent to a pessimistic 4.5 percent. The actual percentage change in 1973 far exceeded these forecasts; it actually increased to a level ranging from 7.4 percent to 15.5 percent, depending upon the inflation measure used.

It would appear, then, that the events of 1971 and 1972 were misleading in regard to the probable continuing level of inflation. Currently, inflation is increasing at a 12 percent annual rate. Although it is generally hoped that inflation will not remain at the current levels, there is great uncertainty as to the degree to which it will moderate and the period over which such moderation may occur. Whereas the hearings and decision in Phase I took place at a time of predictions of annual CPI increases of about 3 percent, it now appears that annual price increases of no lower than the 6 percent to 7 percent range are most likely for the foreseeable future. Even the most optimistic forecasts do not envision an annual increase of less than 7 percent in the immediate future. Since investor return requirements are influenced by inflationary expectations, this change is significant and makes the Commission's findings in Phase I totally

inadequate for present conditions, and - as will be shown subsequently - has increased Bell's earnings requirements substantially. Of course, if inflation remains at 12 percent, then investor return requirements will undoubtedly shift upward to an even greater extent than discussed in this statement.

COMPETITION FOR CAPITAL IN THE FINANCIAL MARKETS

Concurrently, other events have occurred which have had an impact on the cost of capital. In addition to the large and continuing requirement for capital investment on the part of private industry and government alike, new demands have arisen which, in combination with traditional needs, make the competition for capital more severe than ever before.

For one thing, there are the plant expenditures required to restore capacity in basic industries such as steel, paper, cement, and petroleum. Large increases in capital spending are anticipated in these sectors. Demands to clean up the environment have added to those requirements, and it is estimated that pollution control equipment will cost several billion dollars over the next few years. Estimates of the needs for new capital for the energy industry alone range upward of one trillion dollars over the next decade.

Capital investment needed for urban transportation, housing and other major programs will require amounts of capital well above levels of the past. Higher inflation rates will increase the nominal requirements even further. Over the next decade the annual demand for

funds for these public and private requirements is forecast to be at least twice the level of actual financings carried out over the last several years.

The competition for these funds in the money markets will influence both supply-demand relationships and the cost of funds. Whether the national economy can supply sufficient funds to meet all these needs will depend on many factors, including the rate of economic growth and savings rates. In any event, the demand for these funds will be intense as the nation strives to achieve its economic goals.

These conditions in the capital markets have important implications for the Bell System. First, such competition for funds has a pronounced impact on the cost of money because the significant increase in demand will place continuing upward pressure on the cost of funds, inflation and other considerations quite aside. Second, it becomes even more imperative for Bell to maintain its debt quality and achieve competitive equity earnings levels if it is to raise the capital needed to meet service requirements in the face of such competition.

INTEREST RATES AND THE COST OF DEBT

Attachment C traces the cost of Bell System long-term debt since 1960. From 1965 the level of interest rates increased, as did inflation rates. Debt costs reached unprecedented levels of 9 to 9-1/2 percent for high-grade corporate issues just prior to the start of Phase I. During most of 1971 and 1972, interest rates fluctuated somewhat below the 8 percent level, a decline apparently coinciding with investors' hopes that inflation would be brought under control. The finding by the Commission in its Phase I decision

was that long-term rates would be in the range of 7-1/4 to 7-1/2 percent in the immediately foreseeable future.

These estimates have subsequently proved to be much too optimistic. Events of 1973 and 1974 have dashed the prior hopes of investors for a continuing moderation of inflation, and interest rates have risen accordingly. Long-term rates are substantially higher than those experienced in early 1973, and the last Bell issues have set all-time historic highs for the Bell System. Some long-term issues in recent months have incurred capital costs in excess of 10 percent. Similarly, short-term rates are well above anything witnessed during Phase I, as shown on Attachment D. The last Bell System intermediate debt sold, the Pacific Telephone and Telegraph Company notes issued October 15, 1974, cost more than 9 percent.

As announced on November 22, 1974, the $600 million AT&T debt issue was withdrawn in order to give investors time to consider fully the impact of the recent antitrust action by the Justice Department. It is planned to renegotiate the issue on or about January 28, 1975.

As to Bell's embedded cost of debt, the Commission found in its Phase I decision that the current cost of newly issued debt would not materially affect the embedded cost. Therefore, the Commission concluded that the embedded cost would not increase significantly. Attachment D shows that our embedded cost has continued to increase. In the period just prior to November 1970, the increase in embedded cost was quite rapid, mainly because of the impact of rapidly increasing short and long rates. At the end of 1970 our embedded cost was 5.78 percent, up sharply from 4.54 percent at the end of 1968. In contrast the rate of change was modest during the hearings in Phase I, and by November 1972

the embedded cost of debt stood at 6.09 percent, essentially the 6 percent level recommended by Mr. Scanlon and utilized by the Commission. Since November 1972 our embedded costs have again been climbing steadily because of the tremendous increases in both short- and long-term rates. By November 1974 Bell's embedded cost was 6.8 percent, well above that in November 1972, and vivid testimony to the impact of current rates on our embedded cost.

With inflationary expectations of 6 percent or higher, long-term interest rates can be expected to remain at or near current levels. Even if attempts to control inflation are more successful than now forecast, the supply-demand considerations mentioned earlier will likely continue to keep rates for long-term borrowings very high.

Although supply and demand considerations for shorter maturity funds may cause short rates to fluctuate more widely than long rates, inflation undoubtedly will also keep those rates high by historic standards. This must follow if investors are to achieve any real return on their investments.

In Dr. O'Leary's statement, he estimates that long-term rates will be between 8 and 10 percent for the foreseeable future and that short-term rates will range between 7 and 12 percent. Attachment E is a matrix depicting Bell's embedded cost of debt as of December 31, 1975 under the prospective ranges of short-term and long-term interest rates. If long-term rates average 8-1/2 percent during 1975 and short-term rates come down somewhat, as Dr. O'Leary states, our embedded cost of debt at the end of 1975 will be at or above our current level. Using the average rates in the middle of Dr. O'Leary's ranges, an embedded cost somewhat higher than our current level of 6.8 percent will prevail in the future. Therefore, an embedded cost of debt of 7.0 percent is appropriate for use in determining Bell's current overall earnings requirement.

RECENT FINANCING ACTIVITIES

Our construction program is presently at a level of about $10 billion a year and our external financing needs continue at about the $4 billion level discussed in Phase I.

During Phase I, Mr. Scanlon stressed the need for equity earnings levels which would allow Bell to issue new common equity. Financing with common stock was needed to meet our capital requirements and at the same time protect the quality of our debt. Attachment F shows the market price and book value of AT&T common stock. Since the Commission's Phase I Decision in November 1972, our return on book equity has steadily improved and is now about at the level allowed in that Order. In spite of this, the market price of AT&T's stock has either been below or so close to book value that issuance of new common equity has been precluded. AT&T sold at about $40 a share as recently as September 1974 and is currently in the mid $40s. Book value per share was about $51 at the end of October 1974. We continue to be unable to sell new common stock on reasonable terms because of of this adverse market/book relationship.

We were able to sell preferred stock in 1973 and had a dividend reinvestment plan (in new shares) in operation; still much of our external financing had to be in the form of debt. Essentially all of our external financing this year has been debt. As a result, our debt ratio and interest coverage have continued to deteriorate to the level where our debt quality is endangered. Post-tax interest coverage was 2.77 times in 1972, and declined to 2.76 in 1973. Coverage has declined further and was at 2.64 at the end of October 1974. Bell's debt ratio at the end of November 1974 was 49 percent. We expect a debt ratio above that level and slightly lower interest coverage by year-end.

Primarily as a result of past financial policies which provided a borrowing reserve for periods of difficulty, we have had sufficient borrowing margin to finance our construction program in the absence of the availability of new common stock. But our options are now being severely strained, and it is impossible to maintain our financial integrity without substantially improved earnings.

Because of the continuing heavy use of debt financing, the quality of our debt securities has deteriorated to the point where we cannot rely solely on debt financing without losing our credit rating. Further, although our initial offerings of preferred were well received and we may from time to time try to market additional preferred stock, preferred does not obviate the need for greatly improved equity earnings or the issuance of common stock. It is becoming increasingly difficult to market preferred stock because of the shortage of funds available for such investments at the savings banks and insurance companies, the usual source of such capital. AT&T's current fixed charge coverage is below the ongoing 2.5 times required by rating agencies to maintain the present Double-A rating on AT&T preferred. Even if the markets could accommodate us, issuance of significant amounts of preferred, particularly at current rates, would not only jeopardize our preferred rating, but could result in downgrading of our debt as well.

So, in order to prevent loss of the Triple-A rating on Bell's debt securities and ensure adequate capital availability, we must have the ability to raise large amounts of new common equity very soon; and we must be able to do so on an ongoing basis. As we shall show, substantially improved equity earnings are necessary if we are to accomplish that.

Attachment G shows the debt ratios for high grade electrics and Bell. The current situation in the electric utility industry demonstrates the danger in allowing debt ratios to climb beyond levels that will protect high quality debt ratings over the entire range of market conditions. The electrics relied heavily on debt during a period of low interest costs and pushed their debt ratios to a point where they had inadequate borrowing reserves. Subsequently, when common stock financing was not available and debt financing had to be used extensively in a period of high interest rates, debt quality could not be maintained. A steady decline in interest coverage has occurred, and the result has been a spate of quality downgradings.

Attachment H summarizes the utility downgradings since 1968. As a result of deteriorating financial circumstances, 15 companies were downgraded from Triple-A to Double-A; 53 were downgraded from Double-A to Single-A; and of the 15 that went from Triple-A to Double-A, five were subsequently downgraded to Single-A. At the end of October, only six electrics had debt rated Triple-A by both Moody's and Standard & Poor's.

Attachment I shows Bell's interest coverage pattern compared to those of the electrics which have been downgraded. This comparison indicates that we are now at the level of interest coverage which got the electrics into difficulty. At the end of 1973 both Bell and the Triple-A electrics were at the interest coverage level which the downgraded electrics had at the time of downgrading.

Our current debt ratio and interest coverage levels are about at the limits we can undertake without incurring general downgrading. Even though only three Bell Companies have been downgraded to date, unless we show some improvement, downgrading of additional issues will occur. We have arrested the sharp decline, but our coverage for over three years has been well below the 3.0 times level required to maintain our current rating. Our discussions with the rating agencies indicate an awareness that it takes a long time to overcome downgrading, and consequently they are reluctant to act hastily. However, when circumstances are marginal for several years and there is no reasonable indication they will improve, the rating agencies must act to protect prospective debt investors.

Many electrics have been trying to reduce their debt ratios, primarily by issuing preferred stock and/or common stock well below book. Their efforts have been insufficient to maintain their financial viability because their current earnings levels and high debt costs have resulted in interest coverage levels insufficient to sustain the quality ratings for their debt. Even with higher allowed earnings levels, the electrics must continue to reduce their debt ratios if they are to protect current quality levels, much less restore debt quality to former levels. Current circumstances in the financial markets, as well as the levels of the electrics' debt ratios and interest coverage, have created significantly higher risk to their equity holders than during the period when the electrics were earning 12 to 14 percent on equity. If the electrics are to be successful in restoring some measure of their financial viability, they will require returns well above what they have earned historically.

Dividend yields of 15 percent and above on some recent electric company common stock issues are clear evidence of this need.

The Commission, in its Phase I Decision, acknowledged the fact that Bell had explored and utilized various modes of financing and that we had struck a balance as to an appropriate debt ratio. The current financial situation throughout the utility industry confirms the appropriateness of an ongoing debt ratio objective in the area of 45 percent. We are currently well above that ratio. We must soon be able to restore a larger measure of borrowing reserve if we are to avoid loss of our financial integrity and be in a position to weather future financing difficulties. The importance of high quality is being proven in today's market place; and it is essential, therefore, that we shortly improve our interest coverage and debt ratio if we are to maintain high quality debt and raise the capital we need.

If Bell is to accomplish the equity financing essential to protecting its debt quality and to meeting its construction program needs, we must achieve earnings levels that will allow issuance of large amounts of new common equity. Attachment J shows the market-to-book ratio and return on book equity of AT&T stock since 1969. Although AT&T has shown steady earnings growth over the last two years, we continue to have a market price which precludes the issuance of new equity on sound terms. Greatly improved earnings levels are required, therefore, if AT&T is to achieve a market/book relationship that will allow attraction of the required substantial amounts of new common stock and maintain the integrity of existing investment.

This is particularly crucial with regard to the AT&T warrants. These warrants will expire in May 1975. Important factors in the decision to issue warrants in 1970 were an ongoing need for common equity and the belief that the exercise of the warrants would accommodate our 1975 equity requirements. The exercise price of the warrants is $52, and significant market price improvement must take place very soon in order to permit their exercise. At the time we issued our warrants, investors purchased them in the expectation that the market price would be above the exercise price by May 1975 and that the warrants would have some intrinsic value when exercisable. Complete or nearly complete exercise of the warrants will only occur if AT&T's stock price is well above $52 by May 1975. In order for that to happen, we must be allowed equity earnings substantially above the level currently being earned.

EQUITY RETURN REQUIREMENTS

The Commission must ultimately determine an equity earnings level on book investment. However, it is essential that allowed earnings on book equity satisfy investor return requirements in the market place if we are to attract new equity capital. Thus, we shall determine the investors' equity market return requirement and then develop the book return needed to satisfy this requirement. We shall first examine the historic relationship of debt and equity market returns to determine the risk premium required for investing in equities and the market return required on equities generally. We shall then examine relative price/earnings (P/E) performance to appraise investor evaluation of the relative risks of sectors of the equity markets, and the market return required from AT&T. The reasonableness of that result will be tested using the discounted

cash flow (DCF) method. On the basis of the minimum market/book relationship required to finance new equity without dilution of book value, we shall show that the earnings on common book equity needed to attract capital and maintain the integrity of the existing investment are 14 to 15 percent. Lastly, we shall test the reasonableness of that requirement against book earnings of alternative investments.

The returns that equity investors require in the market place from any particular equity investment are a function of several factors; the returns available from alternative investment opportunities (e.g., debt) and the relative risk of the particular equity investment under consideration compared to other equities. Security valuation methods which attempt to determine the benefits from owning a security, including the discounted cash flow (DCF) method, incorporate these concepts. The discount rate used in these approaches must take account of rates of return available from alternative investment opportunities and relative risks involved.

Market Returns Required for Equities Generally

Because equity market investments are more risky than debt investments, investors require a higher return on these more risky investments. Over most periods of history, such expectations have been achieved. Attachment K shows the relationship of debt and equity market returns for several past periods and the spreads between them.

This attachment contains several industrial series which are used on additional attachments. The Standard & Poor's 425 is a familiar and frequently used aggregate series of industrial firms. It is repre-

We can test the reasonableness of 14 to 15 percent by examining book equity returns for groups of investments with which AT&T must compete. Attachment O shows the returns on common book equity for AT&T and the industrial groups outlined earlier. Returns on common book equity of 14 to 15 percent are in the range of returns achieved by the broad industrial groups like the S&P 425 in most years and extremely modest in contrast to book returns of 17 to 21 percent for the Institutional Holdings group and 19 to 23 percent for the Quality Growth Stocks group.

Further, this book return would mean that our growth in earnings per share would be less than 7 percent, clearly marginal in light of the data for the industrial series on Attachment M. With significant quantities of new equity required, and the implicit dilution therein, we may need even higher growth to compete successfully with firms that do not anticipate such equity needs and accompanying dilution.

In its Order in Phase I, the Commission considered the total return on book equity by combining common and preferred. Combining the 14 to 15 percent requirement on common book equity with the preferred stock presently outstanding (five percent of the capital structure) at a cost of 7.8 percent results in an overall book equity return of about 13-1/2 to 14-1/2 percent, which is used in determining the overall rate of return requirement.

OVERALL RATE OF RETURN

The Commission used a 45 percent debt ratio objective for determining overall rate of return in Phase I. It acknowledged that Bell's financing actions since 1966 had demonstrated a careful and responsible effort to strike a balance between the risks of too much debt and the adverse impacts on ratepayers and stockholders of too little debt.

As outlined earlier, events of the recent past have supported the appropriateness of our long-run goal of 45 percent debt. Although the year-end debt ratio will be considerably above that level, we should be restoring some borrowing margin as soon as possible; and the 45 percent objective should be used to determine our allowed earnings.

Attachment P combines the 7.0 percent embedded cost of debt determined earlier and the 13-1/2 to 14-1/2 percent return on equity, showing an overall rate of return requirement of about 10-1/2 to 11 percent. A rate of return in this range is essential if we are to meet investor requirements and consequently be able to issue required new common equity and maintain our credit standing.

Further, earnings of 10-1/2 to 11 percent are barely enough to restore our interest coverage to the required range. At our projected year-end debt ratio of about 49-1/2 percent and an embedded cost of 7.0 percent, we would have post-tax interest coverage just slightly above the 3 times level required ongoing for a top rating. We have been below 3 times for over three years and must soon show a reversal of this trend to avoid further downgrading. Even if we can soon begin reducing our debt ratio, as mentioned earlier, prospective interest rate levels will cause our coverage to remain barely in the range of 3 times.

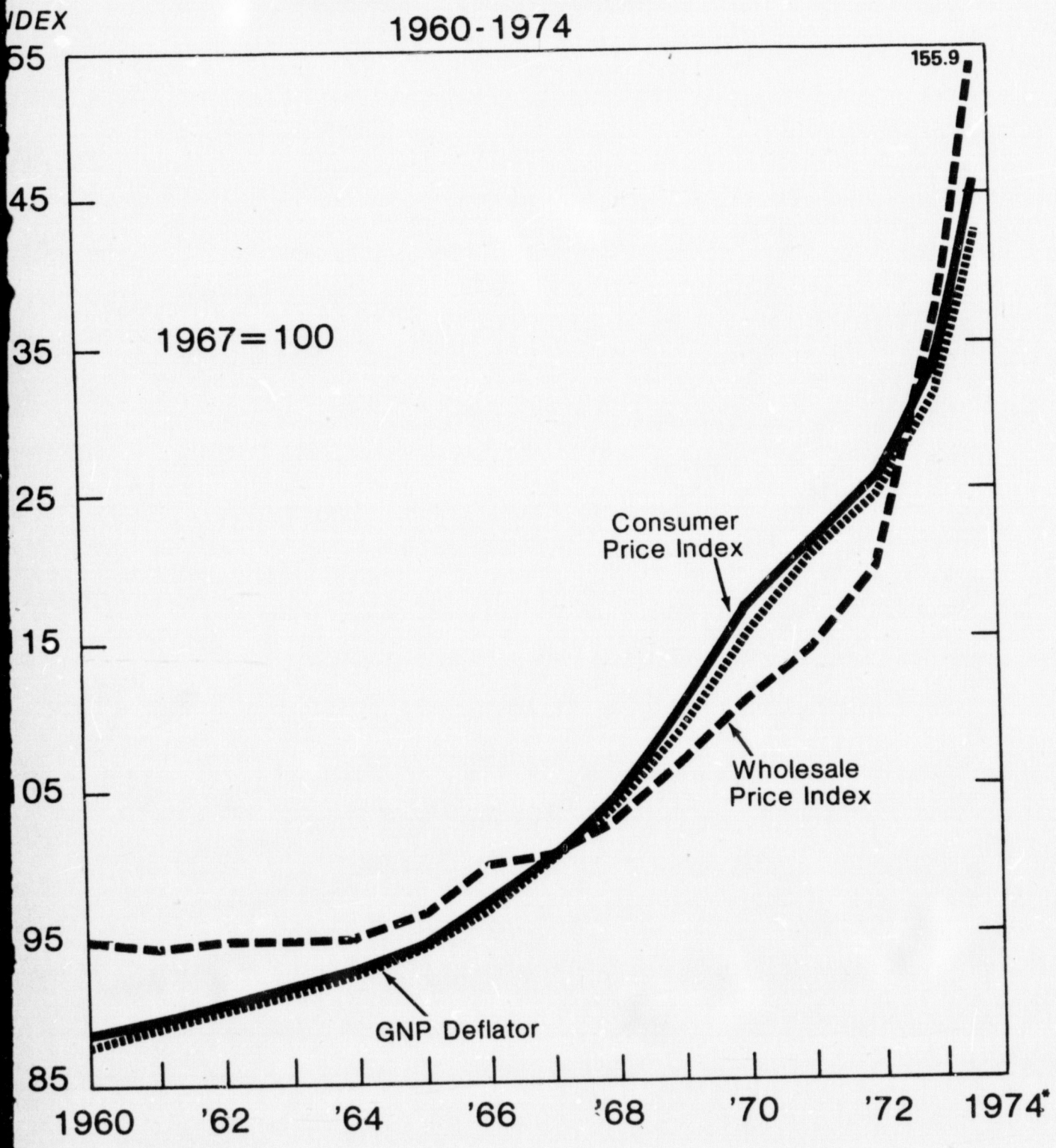
An overall rate of return of 10-1/2 to 11 percent on Bell's interstate investment is required to give us the opportunity to compete successfully for equity capital and maintain the integrity of both the stockholders' and bondholders' investment. This rate of return level is necessary if the Bell System is to continue attracting the capital needed to satisfy customer demands for service.

Bell Statement 5
Attachment A
Page 1 of 1

Changes Since Phase I Decision
Docket 19129

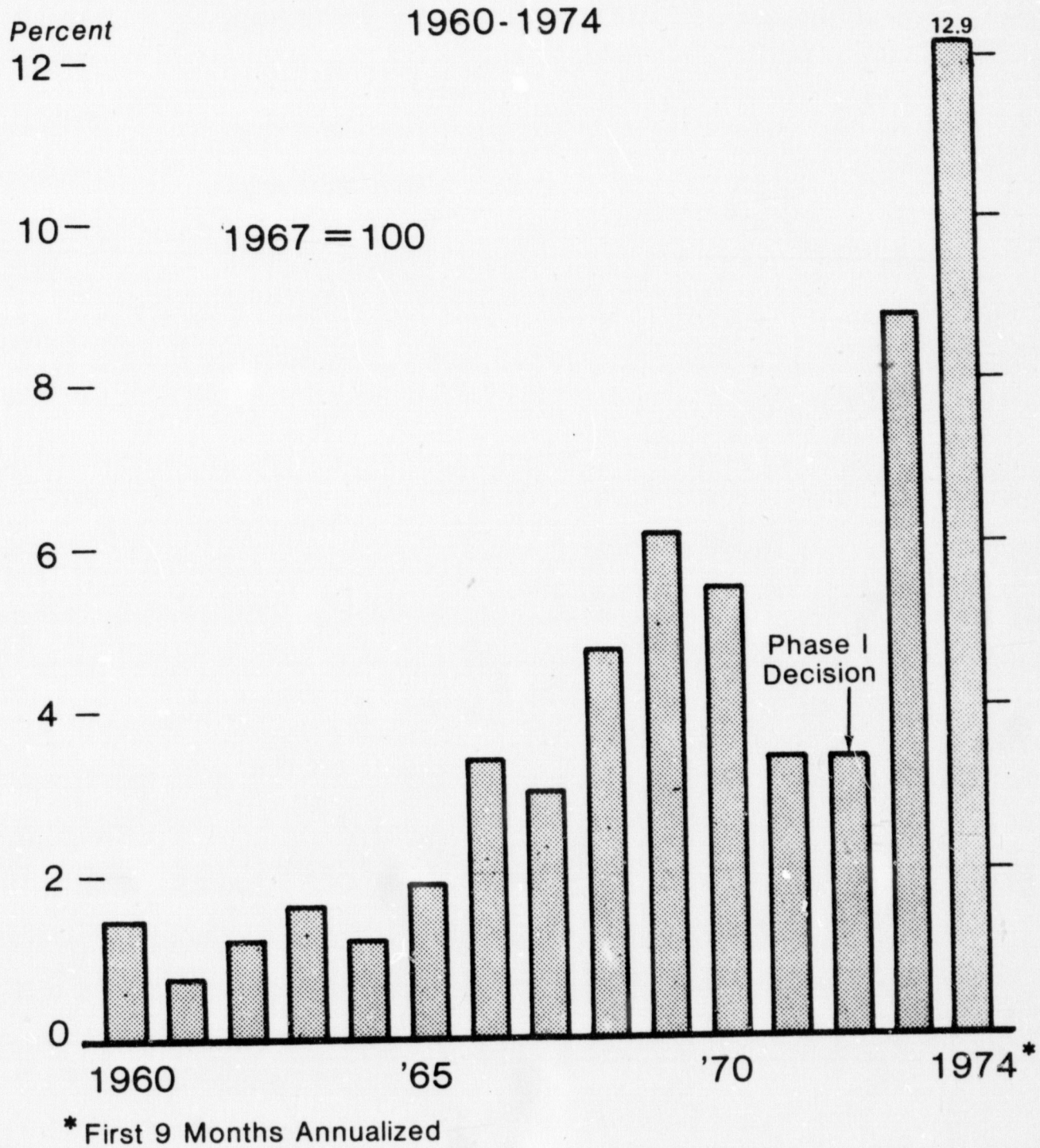
	November 1972	Fall 1974
The Economy		
Rate of Inflation (Annual)	3.4%	12%
Expected Rate of Inflation	2 to 3%	7 to 10%
Prime Rate	5.8%	10 to 12%
The Bell System		
Cost of New Long-Term Debt	7¼%	9½%
Embedded Cost of Debt	6.1%	6.8%
Debt Ratio	47.6%	49.0%
Interest Coverage		
Pre-tax	3.89	3.73
Post-Tax	2.77	2.64
Book Value	$47.08	$51.31
Market Price	$52.75	$40 to 47
Market/Book Ratio	1.1	0.8 to 0.9
Price/Earnings Ratio	12	8
Construction (Annual)		
Current $	$8.3 Billion	$10.0 Billion
1965 $	$6.3 Billion	$6.4 Billion
External Requirements (Annual)		
Current $	$3.9 Billion	$4.0 Billion
1965 $	$2.9 Billion	$2.6 Billion

Trends in Inflation



* Nine months

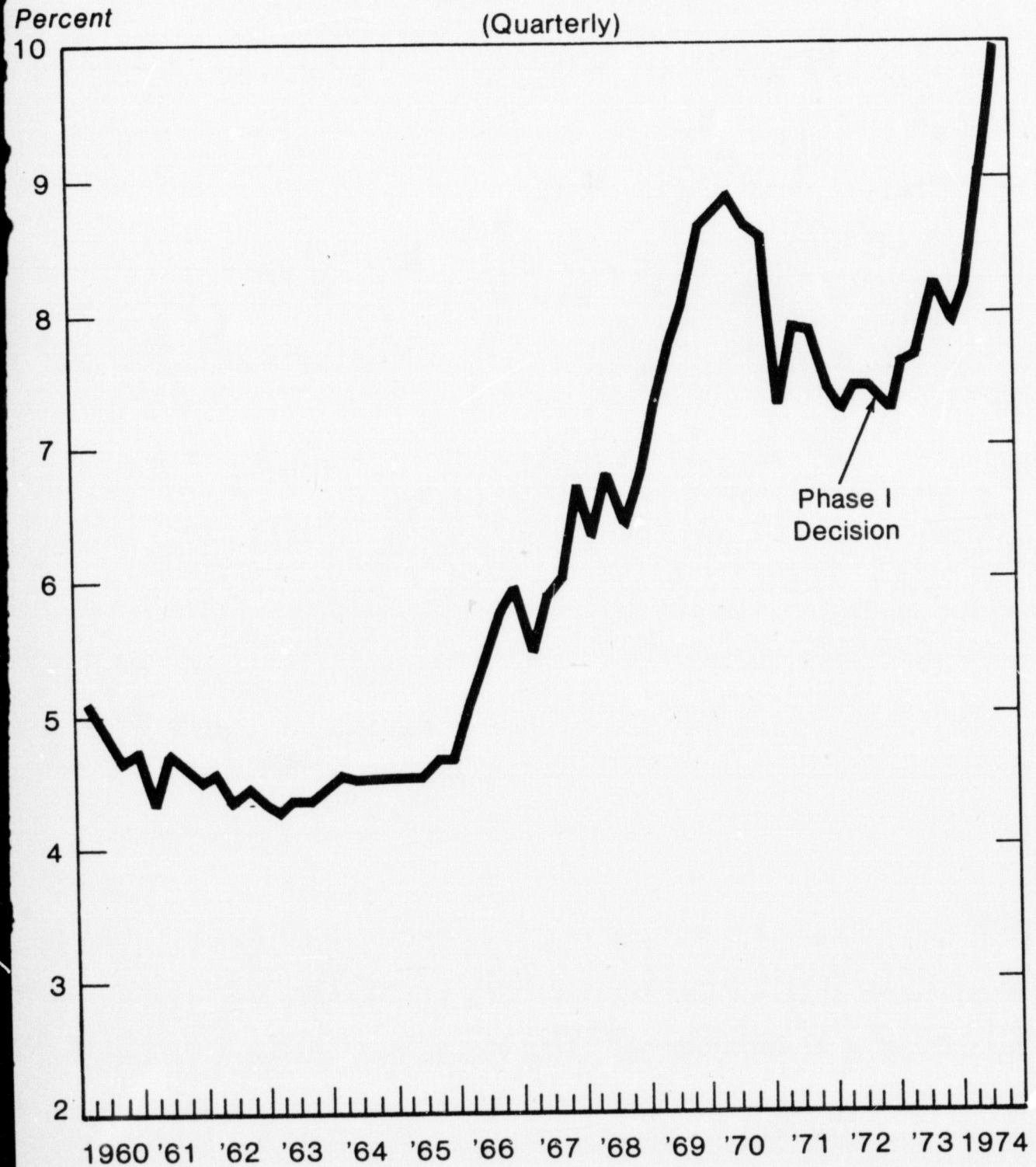
Percentage Change in Consumer Price Index



*First 9 Months Annualized

Cost of Bell System New Long Term Debt

1960-1974



BELL SYSTEM LONG-TERM DEBT ISSUES

Annual Data

Year	Total Amount (Millions)	Cost of Company
1960	$ 817	4.78%
1961	485	4.62
1962	955	4.44
1963	700	4.35
1964	230	4.54
1965	357	4.62
1966	1,270	5.49
1967	1,325	5.86
1968	$1,160	6.61%
1969	1,315	8.02
1970	4,089	8.75
1971	2,830	7.57
1972	1,950	7.44
1973	2.670	7.92
1974 (11 mos.)	2,645	9.14

Recent Issue Data

Date	Company	Total Amount (Millions)	Cost to Company
1- 7-69	Northwestern	$ 75	7.02%
2-11-69	Ches. & Pot.	50	7.06
3-11-69	New York	150	7.47
5- 6-69	Ches. & Pot. - W.Va.	40	7.26
5-27-69	So. New England	65	7.72
6-17-69	Illinois	150	7.91
7- 8-69	Southern	150	8.01
7-29-69	Pennsylvania	100	7.97
8-20-69	Pacific Northwest	75	7.81
9- 9-69	Southwestern	150	8.23
9-29-69	Cincinnati	35	8.35
10-22-69	Mountain States	100	8.06
11-12-69	South Central	125	8.53
12- 2-69	Pacific	150	9.20
1- 6-70	Ohio	100	8.78
1-27-70	Indiana	80	8.88
2-17-70	Michigan	150	8.62
3-10-70	Ches. & Pot. - Va.	75	8.74
3-31-70	Pacific	150	8.73
4-10-70	American Tel. & Tel.	1,569	8.79
5-20-70	New York	150	9.16
6-16-70	New Jersey	100	9.43
6-30-70	Southern	150	9.13
7-13-70	Diamond State	15	8.79
7-21-70	Pennsylvania	100	8.61
8-12-70	Southwestern	150	8.78
9- 1-70	New England	175	8.73
9-23-70	Pacific Northwest	100	8.64
10-14-70	Pacific	175	8.84
10-27-70	Mountain States	150	9.08
11-10-70	American Tel. & Tel.	350	8.78
11-23-70	South Central	150	8.26
12-14-70	New York	200	7.67
1- 5-71	Northwestern	150	7.93
1-26-71	Southwestern	200	6.86
2- 9-71	American Tel. & Tel.	500	7.13
2-16-71	Wisconsin	90	7.23
3- 9-71	Pacific	200	7.87
3-30-71	New Jersey	125	7.26
4-20-71	Illinois	200	7.68
5-11-71	So. New England	110	8.12
5-25-71	New England	200	8.28
6-21-71	Michigan	150	7.87

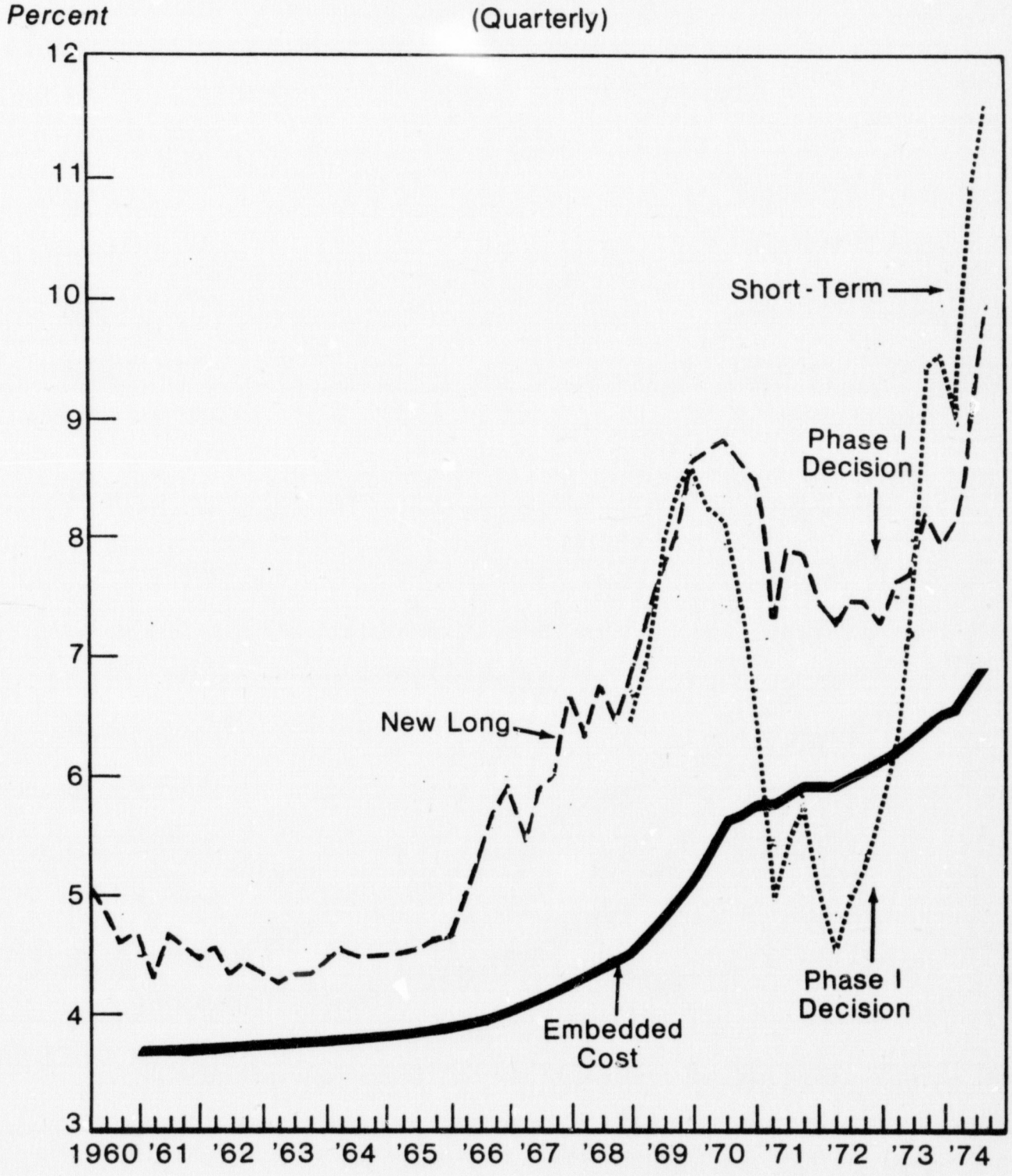
BELL SYSTEM LONG-TERM DEBT ISSUES

Recent Issue Data

Date	Company	Total Amount (Millions)	Cost to Company
7-13-71	New York	$ 150	7.96%
7-27-71	Diamond State	15	8.28
8- 3-71	Indiana	100	8.27
8-17-71	Cincinnati	50	7.51
8-24-71	Southern	100	7.67
9-14-71	Southwestern	125	7.82
10- 5-71	Ohio	100	7.63
10-26-71	Mountain States	125	7.42
11-15-71	South Central	100	7.51
12- 8-71	New York	200	7.35
1- 5-72	Pennsylvania	75	7.27
1-19/6-15-72	American Tel. & Tel.	375	7.76
1-25-72	Ches. & Pot.-Md.	50	7.37
2-15-72	Pacific	175	7.30
4-10-72	Northwestern	100	7.53
5- 2-72	Southwestern	175	7.45
5-22-72	Ches. & Pot.-Va.	50	7.39
6-13-72	New Jersey	75	7.51
7-19-72	Southern	150	7.50
8- 8-72	South Central	100	7.43
10-24-72	New England	200	7.46
11-20-72	Michigan	75	7.13
11-30-72	American Tel. & Tel.	350	7.22
2-13-73	Ches. & Pot.-W. Va.	50	7.35
3-20-73	Southern	350	7.70
4-24-73	Pennsylvania	125	7.59
5-31-73	Pacific	200	7.67
6-20-73	Mountain States	250	7.78
7-31-73	South Central	200	8.36
8-21-73	New York	300	8.28
9-11-73	New Jersey	150	7.91
10- 2-73	Southwestern	300	7.74
10-23-73	Ohio	200	8.01
10-31-73	Ches. & Pot.	60	7.89
11-13-73	New England	170	8.13
11-27-73	Diamond States	15	7.86
12-12-73	Illinois	300	8.06
1- 9-74	Wisconsin	100	8.11
2-14-74	Southern	300	8.13
3-13-74	Southwestern	200	8.35
4- 2-74	Ches. & Pot.-Va.	100	8.72
4-23-74	New York	200	9.04
5-16-74	American Tel. & Tel.	500	8.88
5-29-74	Ches. & Pot.-Md.	100	9.03
6-11-74	Pacific Northwest	90	8.85
6-25-74	Pacific	250	9.59
7-15-74	Pennsylvania	175	9.74
8- 6-74	Mountain States	175	9.91
8-27-74	Northwestern	150	10.14
9-17-74	South Central	225	10.14
10- 1-74	Indiana	80	10.12
12-03-74	So. New England	80	9.71

Cost of Bell System Debt

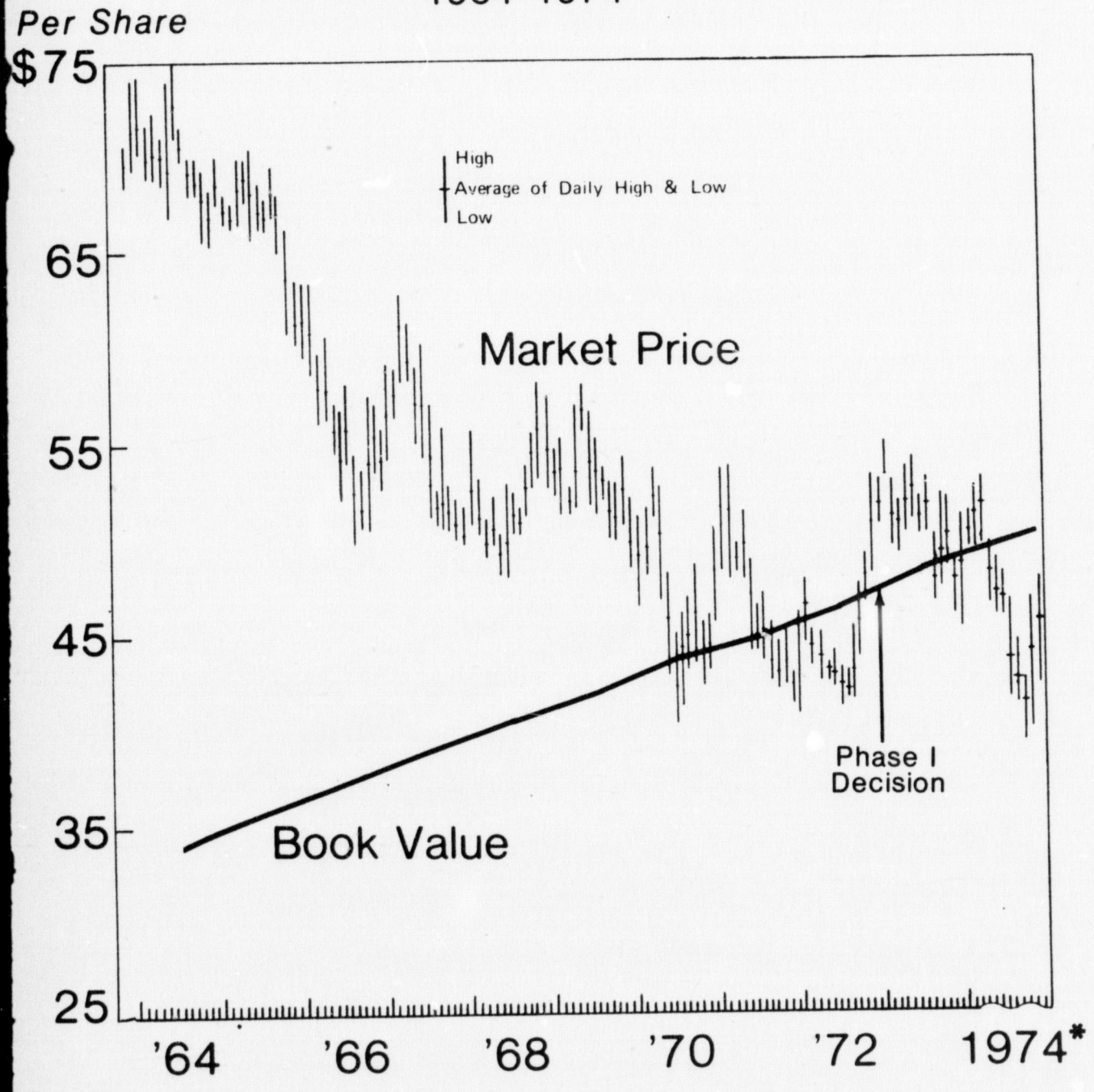
1960 - 1974
(Quarterly)



Bell Statement 5
Attachment F
Page 1 of 1

AT&T Market Price and Book Value

1964-1974

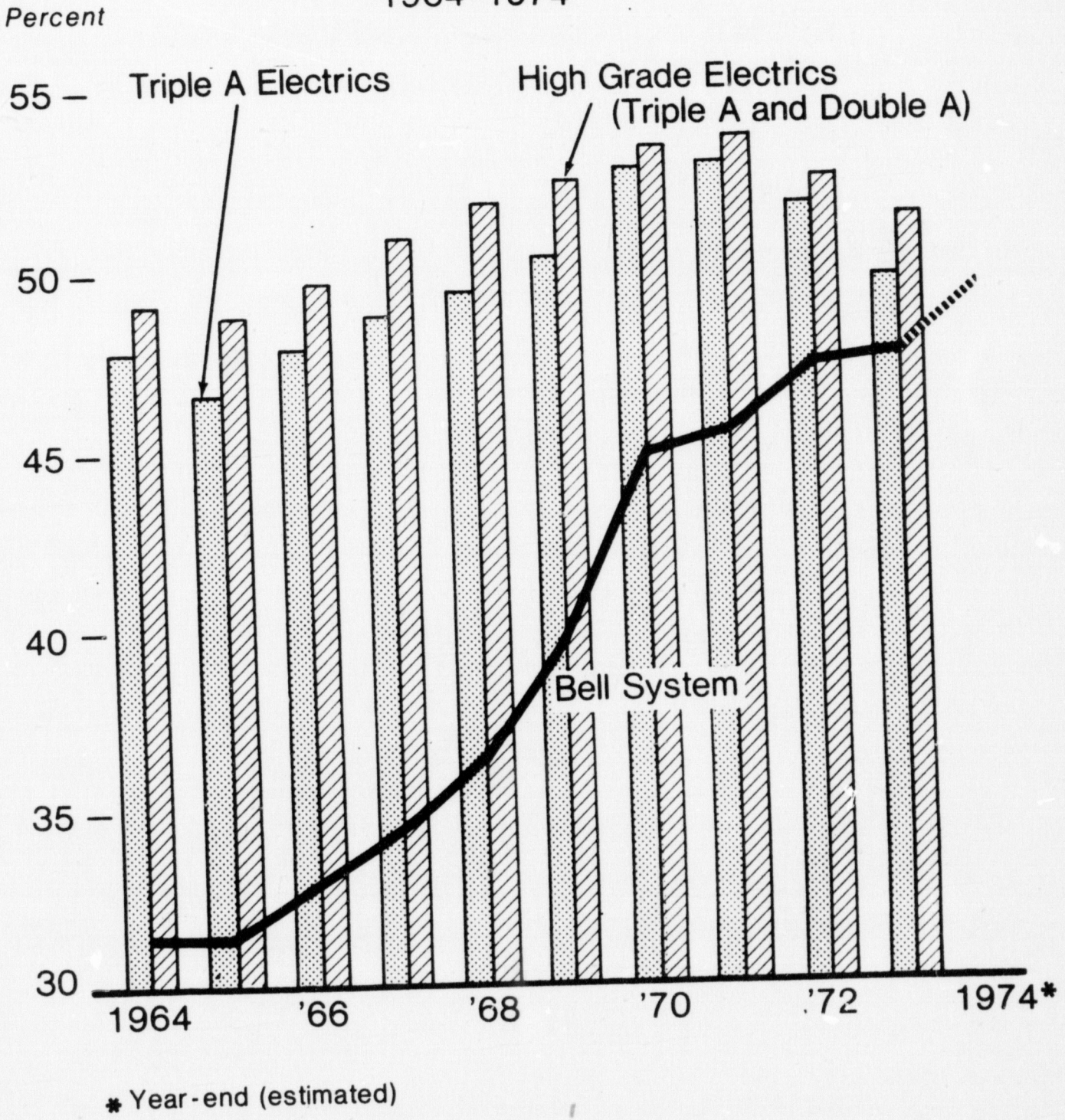


*11 months

Bell Statement 5
Attachment G
Page 1 of 1

Debt Ratios

1964-1974



* Year-end (estimated)

High Grade Utility Downgradings
Since Jan. 1, 1968

(By either Moody's or Standard & Poor's)

Triple A to Double A

Connecticut Lt. & Power *
Philadelphia Elec. *
Wisconsin Elec. Power
Duquesne Light
Boston Edison *
Duke Power *
Kansas City Power & Lt.
Ohio Edison
So. New England Tel.
Consumers Power *
New England Tel. & Tel.
Baltimore Gas & Elec.
Commonwealth Edison
Pacific Tel. & Tel.
Cleveland Elec. Illum.

Double A to Single A

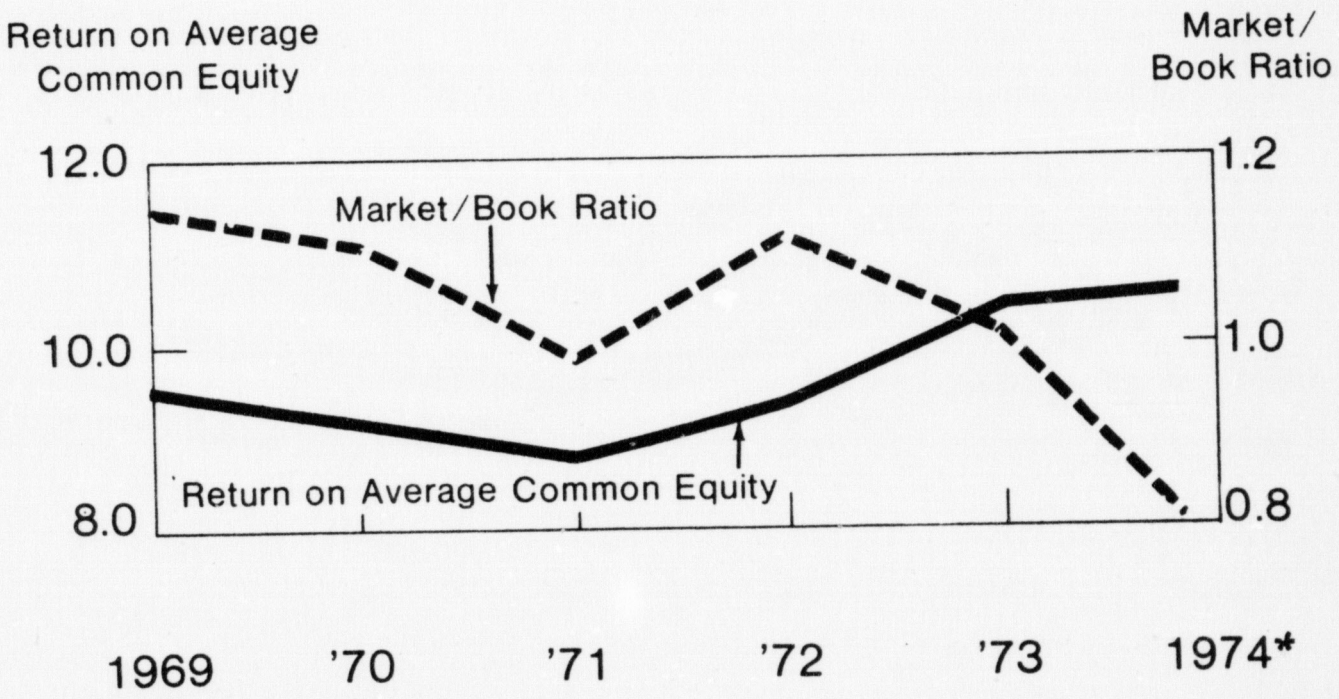
National Fuel Gas
Niagara Mohawk Power
Metropolitan Edison
Potomac Elec. Power
Wisconsin Public Service
Bell Canada
Brockton Edison
Indiana & Michigan Elec
Madison Gas & Elec.
Pennsylvania Elec.
Rochester Gas & Elec.
Appalachian Power
Monongahela Power
Elizabethtown Gas
Carolina Tel. & Tel
New England Power
Iowa Elec Lt. & Power
New Bedford Gas & Ed. Lt.
Ohio Power
Florida Power & Lt.
Pennsylvania Power & Lt.
Hawaiian Tel.
Carolina Power & Lt
Iowa Power & Lt.
Central Hudson Gas & Elec
Columbus & So. Ohio Elec.
Iowa-Ill. Gas & Elec.
Pennsylvania Power
Cambridge Elec. Lt.
Duke Power *
Georgia Power
Canal Electric
Boston Edison *
Atlantic City Elec.
Nat'l. Gas Pipeline of Amer.
San Diego Gas & Elec.
Union Elec.
Wisconsin Pwr. & Lt
Connecticut Lt. & Pwr *
Hartford Elec. Lt.
Western Mass. Elec.
Detroit Edison
Central Illinois Lt.
Delmarva Pwr. & Lt.
Virginia Elec & Pwr
Long Island Ltg.
Consumers Pwr.*
Toledo Edison
Florida Pwr.
N.Y. State Elec. & Gas
So. Calif. Gas
Philadelphia Elec. *
Dayton Pwr. & Lt.

As of 10/31/74

*Downgraded twice

AT&T Market/Book Ratio vs. Return on Average Common Equity

1969 - 1974



* As of 10-31-74

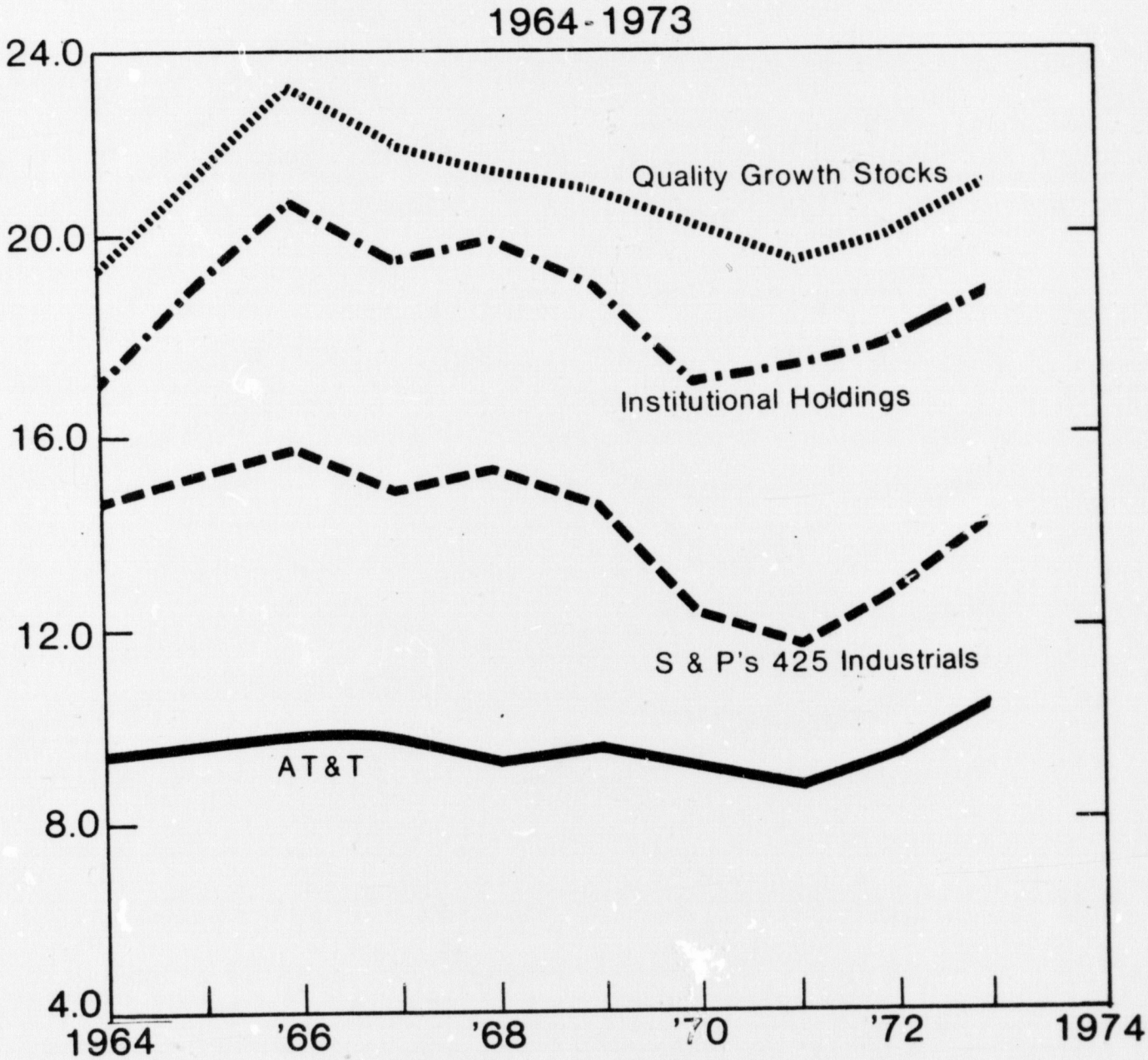
Spreads Between Equity Market Returns and Newly Issued Bond Yields

5-Year Moving Averages – 1954-1973

	S&P's 425 Industrials			Institutional Holdings		
	Realized Market Returns	Moody's Newly Issued Corporate Bond Yields	Spreads	Realized Market Returns	Moody's Newly Issued Corporate Bond Yields	Spreads
5 Years (1969-73)	12.1	7.3	4.8	20.2	7.3	12.9
10 Years (1964-73)	15.5	6.1	9.4	19.9	6.1	13.8
20 Years (1954-73)	18.8	5.1	13.7	22.7	5.1	17.6

	Quality Growth Stocks		
	Realized Market Returns	Moody's Newly Issued Corporate Bond Yields	Spreads
5 Years (1969-73)	25.4	7.3	18.1
10 Years (1964-73)	24.6	6.1	18.5
20 Years (1954-73)	25.9	5.1	20.8

Return on Book Equity
AT&T vs. Market Aggregates



Bell Statement 5
Attachment P
Page 1 of 1

Required Return

Debt	45%	@	7.0%	=	3.15%	3.15%
Equity	55%	@	13.5%	=	7.43%	
		@	14.5%	=		7.98%
					10.58%	11.13%

Range 10.5% – 11%

Before The

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
	)	Docket No._____
Charges for Interstate Telephone Service.	)	
	)	
AT&T Transmittal No. 12241	)	

PROTEST

Now comes City of Chicago ("City") and hereby files its Protest against the American Telephone and Telegraph Company ("AT&T") proposed rate increases identified as Transmittal No. 12241. In support of its Protest, City states as follows:

1. City is a municipal corporation of the State of Illinois.

2. City's residential, commercial and industrial telephone users utilize AT&T long line services, the rates of which are proposed to be increased by the aforesaid filing.

3. City was a Protest Intervenor in AT&T's last rate proceeding Docket No. 19129 Phase I and is a Protest Intervenor in AT&T Docket No. 19129 Phase II.

4. On or about January 3, 1975, AT&T filed tariffs by which it proposes to increase the rates for long distance telephone calls. Said rates are designed to produce additional annual revenue to the Bell System in the amount of $717 million or an increase of

7.2% in interstate revenues.

5. The new rates, if not suspended, are to become effective on March 4, 1975.

6. City asks that AT&T's rate filing be suspended and that the FCC institute an investigation to determine the propriety and reasonableness of said rates as filed.

WHEREFORE, the City of Chicago prays that the Federal Communications Commission suspend the rate filing of the American Telephone and Telegraph Company, identified as Transmittal No. 12241, and that the Commission institute an appropriate investigation proceeding to determine the propriety and reasonableness of the said rates as filed.

Respectfully submitted,

CITY OF CHICAGO
WILLIAM R. QUINLAN
Acting Corporation Counsel

By_____
Bernard Rane,
Assistant Corporation Counsel

Room 511, City Hall
Chicago, Illinois, 60602
Telephone: Area code 312-744-6913

A F F I D A V I T

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

BERNARD RANE, being duly sworn upon his oath, deposes and says that he is an Assistant Corporation Counsel of the City of Chicago and is authorized to execute this Affidavit; that he has read the foregoing Protest of the City of Chicago and is familiar with the contents thereof; and that the matters contained therein are true and correct to his best information, knowledge and belief.

Bernard Rane,
Assistant Corporation Counsel

Subscribed and sworn to
before me this 22nd day
of January, 1975

NOTARY PUBLIC.

Before the
Federal Communications Commission
Washington, D. C.

In the Matter of
American Telephone and Telegraph Company
1975 Interstate Rate Increase

Transmittal No. 12241

Petition of the
Council on Wage and Price Stability
for Suspension and Investigation

Vaughn C. Williams
General Counsel
Council on Wage and
Price Stability

George C. Eads
Assistant Director for
Government Operations
and Research
Council on Wage and
Price Stability

Communications with respect
to this document should be
sent to:

J. Michael Roach
Assistant General Counsel
Council on Wage and
Price Stability
New Executive Office Building
Room 3235
Washington, D.C. 20506
(202) 456-2237

Date: January 23, 1975

Before The
Federal Communications Commission
Washington, D. C.

In the Matter of
American Telephone and Telegraph Company
1975 Interstate Rate Increase

Transmittal No. 12241

Petition for Suspension and Investigation

The Council on Wage and Price Stability (the "Council") hereby petitions the Federal Communications Commission (the "Commission") for suspension and investigation of the 1975 Interstate Rate Increase ("Rate Increase") filed by the American Telephone and Telegraph Company ("AT&T") on January 3, 1975.[1/]

Introduction

The rate revisions proposed by the AT&T Rate Increase are unusually comprehensive and complex. Their implementation would result in generally increased rates applicable to: (1) Long Distance

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1/ This petition is filed pursuant to Section 204 of the Communications Act of 1934, 47 U.S.C. 204 and Section 1.773 of the Commission's Rules of Practice and Procedure, 47 C.F.R. 1.773.

Message Telecommunications Service (MTS), furnished within the United States (except Hawaii and Alaska) and between the United States (except Hawaii and Alaska) and Canada and Mexico; (2) Wide Area Telecommunications Service (WATS); and (3) Private Line Service.[2/]

For purposes of analysis, the proposed Rate Increase can be divided into two basic elements: rate level and rate structure. AT&T is seeking a substantial increase (in excess of 7 percent) in the rate level for interstate service for the purpose of generating more than $700 million additional revenue annually. In addition, the company is proposing a major overhaul of its rate structure, designed to make it more cost-based and having the result of substantially increasing the rates for some services while decreasing or increasing only slightly, the rates for other services.

Members of the professional staff of the Council have reviewed the exhibits and other documents filed by AT&T in support of its Rate Increase. On the basis of this initial review, the Council has reached the following conclusions, which are set forth more fully in Section II of this Petition.

With respect to the proposed rate level, it is the Council's view that the information filed to date by AT&T does

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2/ AT&T's proposed rate revisions affect the following FCC tariffs: Nos. 259, 260, and 263.

not adequately justify the 7.2 percent, $700 million increase. Briefly, the bases for the Council's conclusions are as follows: The operating cost increases itemized by AT&T may warrant a rate increase of some dimension, but clearly do not justify a rate increase of the magnitude sought by AT&T. Similarly, the recently increased debt cost that AT&T has incurred might justify some increase in the rate of return and therefore the rate level, but substantially less than the 25 percent increase in the allowable rate of return sought by AT&T.

With respect to the rate structure question, the Council is of the tentative view that a modification of the rate structure along the lines proposed by AT&T so as to make the structure more nearly cost-based -- with the users of each type of service more nearly paying all of the costs associated with the provision of that service -- may well be desirable. The proposal is so far-reaching, however, that it requires the most careful scrutiny by the Commission before its implementation. Moreover, the Council urges the Commission to give careful consideration to the possible inflationary impact of the proposal -- particularly on small and intermediate sized businesses -- and to take steps, such as a phasing of any rate revisions approved, which will ameliorate any such impacts as the Commission finds might occur.

For these reasons, the Council urges the Commission to

suspend the proposed rate increase pending the Commission's further investigation.

I. The Council has an interest in assuring that the Commission and other Federal regulatory agencies thoroughly analyze the inflationary impacts of rates proposed by regulated common carriers, and that the agencies reach decisions which minimize or avoid those inflationary impacts.

The Council on Wage and Price Stability was created by the Council on Wage and Price Stability Act of 1974 (Public Law No. 93-387) on August 24, 1974. The Council's purposes under that Act are, generally summarized, to monitor the inflationary impact of activities in both the public and private sectors of the economy. Section 3(a)(7) of the Act expressly directs the Council to:

> "review and appraise the various programs, policies and activities of the departments and agencies of the United States for the purpose of determining the extent to which those programs and activities are contributing to inflation."

Further, Section 5 of the Act requires the Council to report its findings and recommendations for the containment of inflation to the President and Congress.

Consequently, the Council's interest in the Rate Increase proposed by AT&T is to ensure: (1) that any permitted increase in the rate level not exceed the level required both to meet the actual costs incurred by the company and to permit the

company a just and reasonable rate of return on its investments in interstate operations; and (2) that the revised rate structure is not approved prior to a complete analysis by the Commission of its potential inflationary impact. It is the Council's goal that the Commission reach a decision which will minimize the inflationary pressures of any rate adjustments that may be required and which will permit the most efficient use of AT&T's interstate communications facilities.

II. The information submitted to date by AT&T is inadequate to justify the Rate Increase; therefore, the Rate Increase should be suspended and set for hearing.

As stated in the Introduction, it is the Council's view that AT&T has not adequately justified its proposed Rate Increase and that a suspension and investigation of the increase is therefore necessary. The bases for this view are set forth in the following paragraphs.

A. AT&T has thus far not presented evidence sufficient to justify the $700 million, 7.2% increase in the rate level which it seeks.

1. The magnitude of the increase requested does not appear to be justified by increased operating costs.

During both calendar years 1973 and 1974, AT&T earned the 8.5% return on its investment in interstate operations found

by the Commission in 1972 to be just and reasonable.[3/] According to the estimates submitted by the company, it will come close to achieving that rate of return (8.2%) in calendar year 1975 without adjustment of the rate level.

Thus, the increase in the rate level sought by AT&T is based only in small part on the increased costs which the company expects to experience in 1975. AT&T's filing does not show that the company is confronted with a serious operating "cost-price" squeeze. The average revenue per message (MTS service) is estimated by AT&T to increase from $2.05 in 1974 to $2.09 in 1975, an increase of 4¢ per message. Based on the material submitted by AT&T, our preliminary estimate is that expenses and taxes will increase from $1.70 per MTS message in 1974 to $1.75 in 1975, or about 5¢ per message.[4/] Revenue increases of less than one percent would suffice to recover increased operating costs, whereas the actual request is for a 7.2 percent increase. Hence, increases in operating costs are a minor element in AT&T's request. If traditional cost "pass-through" criteria were employed, little, if any, increase would be necessary. As discussed below, however,

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3/ See 38 F.C.C. 2d 213 (1972).

4/ This is only a very rough calculation made by dividing total expenses for interstate operations by the number of MTS messages. Thus, it is not based on an allocation of costs among MTS and other services.

AT&T's request for an increase in the rate level is based primarily on its position that the prescribed rate of return on its investment should be substantially increased.

2. AT&T has not presented adequate justification for raising its prescribed rate of return (from 8.5%) to 10.5% to 11%

The major portion of AT&T's proposed Rate Increase is based not on increased operating costs, but on an alleged need to raise the company's rate of return from the 8.5% prescribed by the Commission in 1972 to a return in the 10.5% to 11% range. In attempting to justify this 25% increase in return on its investment, the company makes a twofold argument. First, it argues that the cost of debt (both embedded debt and the current cost of new debt) has risen substantially since the Commission's establishment of the 8.5% rate of return. Second, AT&T argues that it must raise new equity capital in order to continue to sell new debt and that it cannot do so unless it can significantly raise its earnings so as to cause the market price of its stock to rise above book value.

In the view of the Council, AT&T has not presented sufficient facts and argument in support of either of these contentions to warrant an increase in its prescribed rate of return of the magnitude sought.

The presently prescribed rate of return is based on a capital structure with 55 percent equity, an embedded debt cost of

6.1 percent and a current cost of long term debt of 7-1/4 to 7-1/2 percent. Since 1972 the debt/equity ratio has changed so that 51 percent is equity and the cost of embedded debt has risen to 6.8 percent. These changes might persuade the Commission that a slight upward adjustment in the rate of return is warranted.

On the other hand, AT&T's contention that its recent experience in selling long-term debt justifies the substantial upward adjustment in the prescribed rate of return which it seeks is unconvincing. As AT&T notes, in the last six months some issues have sold at rates in excess of 10 percent. In the same period, however, AT&T has sold issues at less than 9 percent and its average interest cost has been on the order of 9.5 percent.[5/] With the recent easing of capital markets and in light of the monetary policy anticipated in the months ahead, we believe that the company's current cost of long-term debt in the immediate future is likely to be below that experienced by the company in the recent past.

5/ A $250 million Southwestern Bell issue of fresh 8.2 percent, seven-year notes recently sold out "instantly" at a price of 100. "Retail customers also swiftly bought its $150 million of 9-1/4% debentures, pegged at 99.5% to yield 9.3% in 40 years." Wall Street Journal, Wednesday, January 8, 1975, p. 28. Within a day or two, the price on the seven-year notes had been driven up sufficiently to reduce their return to 7.82%, the first time "in many months that the return to investors on Bell Systems notes had fallen below 8 percent." Wall Street Journal, Friday, January 10, 1975, p. 18.

AT&T's second line of argument is that it must raise its earnings so as to increase the price of its common stock to a level that will make it possible to sell new equity on favorable terms and reduce, or at least maintain, its present debt/equity ratio. The company fears that unless equity financing is accomplished in the near future its bonds will be downgraded from their present Triple A rating, with the further result that it will incur higher interest rates in selling new issues of its downgraded bonds. An important component of this argument is that AT&T's common stock is now selling at prices below book value.[6/] To sell additional equity at below book value seems "unreasonable" to the company since it would dilute the value of present stockholdings.[7/]

In the Council's view, these arguments are not convincing. It is true that AT&T's debt ratio is higher than at any time in the recent past and thus the Company's desire to raise additional equity is understandable. On the other hand, AT&T has historically held its debt ratio to a conservative level and there may be considerable leeway for debt financing without serious downgrading of bond ratings. There has been no convincing showing

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6/ The company's shares are currently selling in the $47 range while book value, according to AT&T, exceeds $51 per share.

7/ AT&T is seeking immediate relief in the hope that its shares will be selling above $52 by May 15, 1975 when a series of outstanding warrants expire. Exercise of the warrants at $52 per share would provide $1.6 billion in new equity.

that it will cost consumers more in the long run if AT&T issues common, preferred, and bonds in carefully timed and proportioned amounts without reference to the ratio between market and book values. Absent such a demonstration, a conclusion that historical values should be preserved is inappropriate.

For these reasons, the Council submits that to date AT&T has not justified the 7.2 percent increase in the rate level for interstate services which it seeks. Accordingly, we urge the Commission to submit the foregoing issues to a detailed investigation before the tariffs are allowed to become effective. Pending that investigation the tariffs should be suspended.

B. The adjustments in the rate structure proposed by AT&T may be warranted but require investigation before they are permitted to become effective. In addition, the Commission should consider the inflationary impact of the cost increases which would result from the proposed adjustments and, if necessary, take steps to mitigate those impacts through a phasing procedure.

In addition to seeking a substantial increase in the rate level, as described above, AT&T has also proposed a major redesign of the rate structure. The revision in the rate structure, together with the proposed increase in rate level, would result in a wide range of changes in individual service rates. The rate for off-peak dialed calls, for example, would decrease in many cases, while day-time operator assisted calls would experience rate increases

of as much as 60 or 70 percent.[8/]

The major elements in the changes being filed are:

(a) substantial (up to 70 percent) increases on operator assisted day-time calls. These would reflect the labor costs associated with operator assisted calls and eliminate the cross-subsidy now provided by rates on other services.

(b) changes in the allocation of charges by distance. Greater increases would be placed on short-distance calls in an effort to eliminate the cross-subsidy that now exists between long and short distance business.

(c) introduction of a 1 minute initial period on dialed station-to-station service. This would lead to rate reductions for all dialed calls which can be completed within 2 minutes. This should reduce length of conversation and encourage a more effective utilization of plant. The 1 minute initial period would apply to dialed service for all rate periods - day, evening, night, and week-end. It does not apply to operator assisted calls. In general, the objective of these changes in rate structure is to bring

---

8/ The percentage rate increases indicated in the text reflect the effects of the proposed revisions in both the rate level and the rate structure. Thus the increases in rates resulting from the revised rate structure alone would be less than indicated. Because of the complexity of AT&T's rate increase proposal, the Council's staff has been unable to isolate the effects on individual rates which would come about from the revised rate structure alone. It is for this reason, and because the rate level and rate structure issues are fundamentally different, that we urge the Commission to consider these two aspects of AT&T's proposal in separate proceedings. See Section III, below.

the rates for each type of service most closely in line with the cost of providing the service. Movement of this sort toward a cost-based rate structure is desirable. In addition, the changes are estimated by AT&T to lead to cost savings of $192 million per year, a further desirable result. Nonetheless, the magnitude of the proposal alone is such that it requires the most careful scrutiny by the Commission in order to assure that the proposed revisions do, in fact, move towards their stated objectives.

In addition the Council believes that the potential inflationary impact of the proposal on some sections of the economy may be so great as to require that the Commission consider a program for phasing the changes in rate structure. The largest percentage increases (up to 70%) will be applied to operator assisted, day-time calls placed over relatively short distances. These rate increases are likely to strike hardest at small and intermediate-sized businesses, since it is those firms which are not large enough for WATS or Private Line Services.[9/] This will add to the cost-pressures already confronted by these enterprises and might result in substantial dislocations in various areas of the economy.

9/ For government and large scale businesses which use WATS and Private Line Service the increases will be about 7 percent. Residential users will generally be able to avoid the substantially increased rates on day-time, operator assisted calls by making use of the discounts for evening (35%) and night and week-end (60%) dialed calls.

Thus, before the revised rate structure is permitted to become effective the Commission should carefully consider its potential inflationary impact throughout the economy. If it is established that the proposed revisions in the rate structure will have an inflationary impact on portions of the economy, the Council would urge the Commission to implement the revised structure on a phased basis so as to ameliorate those effects and to prevent severe dislocations. Such a phasing procedure has been employed for similar reasons by other regulatory agencies and would, in the Council's view, be an appropriate exercise of the Commission's discretion in the present case.[10/]

III. Conclusion

For all of the foregoing reasons, the Council urges the Commission to conduct a thorough investigation of the 1975 Interstate Rate Increase filed by AT&T. Pending that investigation, the Rate Increase provisions should be suspended pursuant to Section 204 of the Communications Act.

10/ For example, in its recently completed Domestic Passenger Fare Investigation the Civil Aeronautics Board concluded that the existing "cost-related" airline fare-structure -- which "uses costs as a point of departure for value-of-service adjustments" -- should be replaced by a cost-based fare structure in which fares would conform as closely as possible to costs. Despite that ultimate conclusion, the Board determined that an abrupt conversion of the fare structure to a cost-basis "might, in the near term, have an adverse impact on the transportation system as a whole." Accordingly, the Board concluded "that prudent regulation requires that we take only a first step towards a cost-based fare formula at this time, with further changes to be considered only after a careful evaluation of the results of the structure established herein." C.A.B. Order 74-3-82 at 68-73 (March 18, 1974).

Moreover, because of the complexity of the AT&T Rate Increase filing and because it is readily separable into two distinct areas of inquiry, the Council further urges the Commission to divide its consideration of the proposal into at least two proceedings, one for rate level issues, another for consideration of the revised rate structure. The two investigations can proceed simultaneously to decision. Such a procedure has been successfully employed by the Commission in other AT&T rate cases[11/] and would assist the Commission and interested parties in conducting the sort of detailed analysis which the proceeding clearly warrants.

Respectfully submitted,

George C. Eads
Assistant Director for
Government Operations
and Research

Vaughn C. Williams
General Counsel

J. Michael Roach
Assistant General Counsel

11/ See, e.g., 38 F.C.C. 2d 313 (1972)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

In the Matter of AMERICAN TELEPHONE AND TELEGRAPH COMPANY Revisions of Tariff FCC No. 259, Revised Pages as Indicated on Check Sheet Revision No. 128th, Page 1 WIDE AREA TELECOMMUNICATIONS SERVICE Revisions of Tariff FCC No. 260, Revised Pages as Indicated on Check Sheet Revision Nos. 1464th, Page 1, 679th, Page 1.1, and 112th, Page 1.2 PRIVATE LINE SERVICE Revisions of Tariff FCC No. 263, Revised Pages as Indicated on Check Sheet Revision 711th, Page 1 LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICE	AT&T Transmittal No. 12241 Docket No.

PETITION OF THE EXECUTIVE AGENCIES OF THE UNITED STATES FOR SUSPENSION AND INVESTIGATION AND FOR AN ACCOUNTING ORDER

DELLON E. COKER
Chief, Regulatory Law Office
Office of The Judge Advocate General
Department of the Army
Washington, D. C. 20310
For
The Secretary of Defense

MAURICE J. STREET
Assistant General Counsel
General Services Administration
18th & F Streets, N.W.
Washington, D.C. 20404
For
The Administrator of General Services

A. 10

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 205

In the Matter of AMERICAN TELEPHONE AND TELEGRAPH COMPANY	
Revisions of Tariff FCC No. 259, Revised Pages as Indicated on Check Sheet Revision No. 128th, Page 1 WIDE AREA TELECOMMUNICATIONS SERVICE Revisions of Tariff FCC No. 260, Revised Pages as Indicated on Check Sheet Revision Nos. 1464th, Page 1, 679th, Page 1.1, and 112th, Page 1.2 PRIVATE LINE SERVICE Revisions of Tariff FCC No. 263, Revised Pages as Indicated on Check Sheet Revision 711th, Page 1 LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICE	AT&T Transmittal No. 12241 Docket No.

PETITION OF THE EXECUTIVE AGENCIES
OF THE UNITED STATES
FOR SUSPENSION AND INVESTIGATION
AND FOR AN ACCOUNTING ORDER

Comes now the Executive Agencies of the United States, through duly authorized counsel and pursuant to Section 204 of the Communications Act, Title 47, USC Section 204 and Section 1.773 of the FCC's Rules and Regulations, files this Petition for Suspension and Investigation of those portions of American Telephone and Telegraph Company's Tariffs FCC Nos. 259, 260, 263, filed on January 3, 1975, to become effective March 4, 1975, except as otherwise shown, which

establish revised rates for Long Distance Message Telecommunications Service, Wide Area Telecommunications Service, and Private Line Service and for an order directing the carrier to keep accurate account of all amounts received by reason of the involved tariffs, should the investigation not be concluded within the suspension period and providing for refunds to the Executive Agencies of the United States Government and any other injured persons should charges under the tariffs be found not justified. As grounds therefor, the following is shown:

I

That this filing is duly authorized by law.

II

That on January 3, 1975, the American Telephone and Telegraph Company filed the tariffs referred to above, to become effective on March 4, 1975, or as otherwise shown. This filing provides for tariff changes that will result in increased rate levels applicable to (1) Long Distance Message Telecommunications Service (MTS) furnished within the United States (except Hawaii and Alaska) and between the United States (except Hawaii and Alaska) and Canada and Mexico; (2) Wide Area Telecommunications Service (WATS); and (3) Private Line Service. The Executive Agencies of the United States have a substantial interest in this filing by virtue of its large procurement of telecommunications services and facilities in the United

States [illegible] Telephone and Telegraph Company and its affiliates, hereinafter referred to as the Company or the Bell System.

III

That the involved tariff provisions, the letter of transmittal and the supporting statements have been reviewed and an analysis reveals that such documentation does not support the increased rate proposal and that, in fact, such increased rates are improper, unjust, and unreasonable.

IV

That the rates and charges proposed are unreasonable, unjust and unlawful and the Commission should exercise its power to suspend the proposed tariffs is clear from any one of the following:

(a) The sheer size of the increase and the voluminous materials submitted by the Company in support thereof.

(b) The proposal to increase the authorized rate of return from 8.5 - 9.0 percent to 10.58 - 11.13 percent, Bell Statement 5, [illegible]chment P.

(c) The proposal to increase the equity return from present levels, about 10.5, to 13.5 - 14.5 percent. Statement 5, page 17 and Attachment P.

(d) The proposal to use a hypothetical debt ratio of 45 percent as opposed to the actual debt ratio of 49 percent as of November 1974. Bell Statement 5, page 10, and Attachment P.

(e) The impact of the treatment of depreciation expense in

this proposal upon Docket No. 20188, Amendment of Part 31, Uniform System of Accounts, to permit depreciable property to be placed in groups comprised of units with expected equal life for depreciation under the straight-line method.

(f) The innovative changes in the price structure for long-distance interstate service.

(g) The proposal to increase rates on Wide Area Telecommunications Service in the manner proposed, including increasing the initial period rates, first 10 hours, from $5 to $41 at distances up to 900 weighted miles with the higher amounts applicable at shorter distances.

(h) The proposal to increase Domestic Private Line Services across the board at 7.8 percent.

(i) The fact that there will be a substantial monetary impact upon the Department of Defense, estimated $12 million, and upon other Executive Agencies, estimated $8 million.

(j) The effect the proposed innovative price changes will have upon Separations between interstate and intrastate operations as now performed under Docket No. 18866 (Ozark Plan).

(k) Admissions by Company representatives that suspension is required.

V

That first and foremost in any rate filing is the bottom line figure sought by the company, that is, the net income derived from the investment and conveniently referred to as the rate of return. In Phase I, Docket No. 19129, American Telephone and Telegraph Company and Associated Bell System Companies, Charges for Interstate Telephone Service, the Commission found as recently as 1972 that the authorized rate of return should be no higher than 9 percent. The Bell System contends in its filing here that conditions have changed since that time to a point where a return up to 11.13 percent would be just and reasonable and otherwise proper. While there are differences between 1972 and early 1975, the full impact of these changes on the question of whether or not the authorized rate of return should be increased at all is a matter which the Commission could not possibly decide without a full investigation. While the Commission may have previously indicated that the proper rate of return could be calculated on a hypothetical debt ratio, the actual debt ratio is still the main guidepost in determining optimum capital structure. With a current debt ratio of 49 percent, it would be contrary to fact to base a rate of return finding on a 45 percent debt ratio. The equity return sought also consists of a hypothetical equity ratio and an increase in the authorized return to as high as

14.5 percent. As shown in Statement 5, that amount is based in part upon a so-called market approach where the current dividend yield is added to future growth rate to arrive at a calculated cost of equity. The dividend yield is 7 percent but the statement does not recognize that the actual yield would be substantially lower if the growth factor sought were in fact incorporated in its authorized rate of return. It is well known that as the growth factor is increased, the actual dividend yield decreases. The statement and the presentation otherwise also relies on the comparable earnings approach in arguing for a higher authorized return allowance on common equity. Aside from the basic deficiencies in this approach, the statement fails to address in a proper way current and future earnings expectations of the various comparison groups including Standard and Poor's 425 Industrials, Institutional Holdings, and Quality Growth Stocks.

As shown above, the return allowance included within the filed tariffs is based upon numerous underlying arguments and assumptions which can only be finally resolved after a proper investigation. There is a substantial increase over that granted in Docket No. 19129, the capital structure utilized is not actual, and the methods used in arriving at the equity component are questionable.

In Docket No. 20100, the Commission has under review the Bell System's petition requesting that the Commission amend Part 31 (Uniform System of Accounts for Class A and Class B Telephone Companies), of its Rules and Regulations so as to permit property, for depreciation accrual rate development purposes, to be placed in subgroups comprised of units expected to have the same life. The proposal is to change from straight-line vintage group procedure to straight-line equal life group procedure. That matter is presently pending and to the extent that the instant rate proposal includes so-called SLELG, the presentation is premature and not based upon regulatory procedures approved by the Commission for rate development. Any such rates are clearly unjust and unreasonable.

With regard to rate structure, the Company has included revolutionary proposals that are not shown to be just or reasonable. To say the least the increase on WATS for short distances is substantial which immediately gives rise to the proper inference that such rates are excessive. The Company should be required to prove this innovative conception at an investigatory hearing. Further, an increase of 7.8 percent on Private Line Service, which includes service more recently instituted, is questionable. Clearly, without more it must be assumed that there is insufficient justification for this across-the-board approach as to private line service. As pointed out heretofore, the impact of the proposed

increase upon the Department of Defense and other Governmental Agencies will be severe.

The rate structure modifications as to Message Telephone Service are even more pernicious. The innovations are immediately suspect because of the guesswork involved in predicting revenue under the radical departures from present practices, such as a one-minute time period for direct distance dialing. The rate adjustments are said to be designed to produce a 7.2 percent net increase in the Bell System's interstate revenue. Several inferences must be drawn from the institution of the one-minute rate. One that there will be additional calling and that the volume will be sufficient to offset the revenue loss at higher rates. The initial period on coast-to-coast day calls obtains $1.45 in revenue per call. The proposal reduces the initial period revenue to 60 cents per call. For the Commission to approve rates upon inferences based upon inferences would be contrary to well-settled regulatory principles.

Another aspect of the drastic rate changes proposed is the impact which they would have upon Separations. At page 4 of Bell Statement 1, the Company points out that one of the reasons for the rate filing is that there has been an adverse impact upon interstate revenue requirements under the Ozark Plan. That plan obviously was devised under rate schedules now in effect and could

not properly be applied to the new rate filing without substantial modifications. Interstate rates based upon an improper allocation between intrastate and interstate operations are unlawful. Smith v. Illinois Bell Telephone Company, 282 U.S. 133, 148-149, (1930). The Commission should so find. Too, the Company is disturbing further the intrastate-interstate relationships by varying its initial period among one minute (FCC), two minute (Maine, Massachusetts and perhaps others), and three minutes (otherwise universal) on station dialed calls. Such inconsistencies establish that the proposal here may be unjust and unreasonable.

In its filing, Bell System officials, in effect, admit that this proposal is fraught with many difficulties and could be suspended based upon the sheet size alone. The Commission should accommodate those fears by immediately ordering suspension and investigation herein.

WHEREFORE, petitioner prays that the proposed tariff provisions generally increasing the rates for Long Distance Message Telecommunications Service, Wide Area Telecommunications Service and Private Line Service be suspended and not permitted to go into effect; that the Commission enter into an investigation of the tariffs to determine just and reasonable charges for Long Distance Message Telecommunications Service, Wide Area Telecommunications Service and Private Line Service; that a thorough and complete

investigation of the Bell System's request for an increase in its overall rate of return be made together with any and all other issues involved herein and that the Commission further direct the carrier to keep accurate account of all monies received by reason of the involved tariff should the investigation not be concluded during the suspension and investigation period, and to make refunds to the Executive Agencies of the United States and any other injured persons should the charges under the tariff be found not justified.

Respectfully submitted,

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For
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SIGNED

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT	)	Transmittal No. 12241
	)	
Revisions of AT&T Tariff F.C.C. No. 260, Private Line Services	)	

To: The Commission

PETITION TO REJECT TARIFF FILING

The Ad Hoc Telecommunications Committee, composed for the purposes of this filing of Bethlehem Steel Corporation, Chrysler Corporation, Monsanto, Olin Corporation and Westinghouse Corporation (hereinafter "the Committee" or "petitioners") hereby petition that the Commission reject the tariff revisions filed by American Telephone and Telegraph Company (hereinafter "AT&T" or "Bell"), Transmittal No. 12241, dated January 3, 1975 increasing the rates for the private line services offered under AT&T F.C.C. Tariff No. 260 effective March 4, 1975. In support of this petition, the following is shown:

1. Each petitioner is a substantial user of the private line services offered under AT&T Tariff F.C.C. No. 260. Petitioners' bills for these private line services run into many millions of dollars annually. The justification supplied by AT&T with its Transmittal No. 12241 states that all domestic rate elements in Tariff F.C.C. No. 260 will be increased 7.8 percent, with certain

exceptions not here relevant. Due to the volume and complexity of the private line revisions submitted with Transmittal No. 12241, which total 184 pages exclusive of the check sheets, it was not possible, in the time provided for the filing of this petition, to determine the precise impact of these increases on petitioners. However, based on a preliminary review of the proposed increases, petitioners estimate that their annual bills for private line services will increase by an aggregate total of approximately $3 million. Petitioners, accordingly, are aggrieved and adversely affected by the proposed rate increases with standing to file this petition.

2. Petitioners request that the Commission reject the proposed private line service rate increases because they exceed the 8.5 percent rate of return the Commission recently prescribed for all AT&T interstate services. Therefore, the proposed rates are unlawful per se and unacceptable for filing. The ordinary remedy of a 90-day suspension would be totally inadequate in these circumstances. Indeed, where, as here, the tariff itself appears to be unlawful on its face because filed in disregard of a valid, binding and outstanding prescription, rejection should be the primary remedy. An accounting order with a view to a possible future refund would not justify forgoing rejection in favor of suspension because due to the complexity of this tariff it is very likely that petitioners

would have no choice but to revise the routing of their private line services. Such re-routing would be needed in order to compensate for the increased costs which could not be absorbed in their communication budgets. This, in turn, would make the effect of an accounting order largely illusory.

Reasons Why This Tariff Filing Is Unlawful And Should Be Rejected

3. On November 22, 1972 the Commission found, after a hearing in Docket 19129 concerning the lawfulness of AT&T's and its associated Bell System companies' proposed charges for interstate message toll service (MTS), that a rate of return of 8.5 percent on AT&T's interstate operations was appropriate. American Telephone and Telegraph Company, 38 FCC 2d 213, 250; 26 RR 2d 43, 80 (1972), hereinafter referred to as the MTS case. While specifying the rate of return as 8.5 percent, the Commission stated that if Bell is able through improved efficiency or productivity gains to increase its earnings above the range of 8.5 percent, the Commission would consider such increased earnings acceptable up to 9 percent. 38 FCC 2d at 245. However, since the rates before the Commission were predicated on a rate of return of 9.5 percent, the Commission ordered them cancelled. 38 FCC 2d at 251 Thus, the MTS revisions previously filed were ordered stricken from the tariff and declared to be null and void. AT&T was permitted to file a proposed rate schedule consistent with the Commission's findings. These findings, including the

determination concerning the maximum rate of return were subsequently characterized by the Commission as "our prescription of 8.5-9% as the range of reasonableness." 42 FCC 2d 293 at 300 ( ).

4. While the MTS case dealt with the [illegible] for the message toll service, the Commission was fully aware of the relationship of the rate of return issue to other pending cases, notably Docket No. 18128, a still pending proceeding involving the revenue requirements of the private line services.*/ Accordingly, the Commission concluded that the 8.5-9 percent rate of return prescribed in the MTS case for Bell's interstate operations was also applicable to the private line services, the revenue requirements of which were under consideration in Docket 18128. 38 FCC 2d at 217

5. In its letter of January 3, 1975, which was attached to Transmittal No. 12241, AT&T refers to the Commission's 1972 MTS decision which established an 8.5-9 percent rate of return for its interstate services. AT&T states, however, that the economic and

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*/ This is the second rate increase and/or revision filed during the pendency of Docket 18128. On November 15, 1973, AT&T filed the so-called hi-lo private line tariff revisions which were subsequently suspended and designated for hearing in Docket No. 19919, FCC 74-35 and FCC 74-81. That proceeding is still pending. Thus, the revisions submitted with Transmittal No. 12241 are but another one in a series of rate increases and changes piled on top of previous changes, the lawfulness of which has not yet been adjudicated except for the Commission's prescription of a maximum 8.5-9 percent rate of return.

financial circumstances require an interstate earning level of 10.5-11 percent and, accordingly, its proposed rates are designed to produce interstate earnings within that range for its private line services (as well as the message toll service and WATS).

6. Thus, AT&T's private line rates which, according to its own statement, are based on a rate of return in the range of 10.5-11 percent are in patent conflict with the 8.5-9 percent rate of return established two years ago and still in effect. That conflict makes these proposed rate filings unacceptable and they should be rejected just as the previous rates predicated on a 9.5 percent rate of return were cancelled as exceeding the maximum range prescribed by the Commission. This result is, moreover, required by the rationale of the Commission's subsequent order in the MTS case disposing, on January 12, 1973, of objections to AT&T's rates filed in response to the November 22, 1972 prescription order. In determining whether these rates complied with its prescription, the Commission held that the essential and single issue before it was whether AT&T had made a sufficient showing that its proposed rate schedules have been reasonably designed to afford it the relief in the amount the Commission determined in the MTS case, supra. The Commission went on to say

> "If this issue is resolved in the affirmative, then, in accordance with the procedures we have heretofore established to govern this proceeding, such proposed rates may be allowed to become effective on an interim basis subject to further hearings as to the lawfulness of the specific components of the revised rate schedules and subject,

further, to our decision in Docket No. 18128. As interim rate schedules, their application will also be subject to accounting procedures and future refunds in the event and to the extent that our determinations in Phase II of this proceeding and in Docket No. 18128 may require such refunds. Thus, our decision of November 22, 1972 contemplated that we would allow AT&T to increase its earnings by filing a rate schedule on an interim basis with full recognition that it would be clearly impossible to resolve all questions of lawfulness that might be presented as to rate level and rate structure until we have concluded the proceeding in Phase II and Docket 18128." American Telephone and Telegraph Company, 38 FCC 2d 934, 985 (1973)

7. It should be self-evident, therefore, that if in January of 1973 AT&T in filing proposed tariffs was required to conform to the Commission's prescription of the amount of the rate of return to which it was entitled, declared on November 22, 1972 in the MTS case, supra, the same limitation on the rate of return must apply to any further rate increases filed during the pendency of the MTS and the private line proceedings. To put it differently, AT&T may not unilaterally determine that it is entitled to a rate of return almost 24 percent higher than that prescribed by the Commission in a still on-going proceeding without first establishing to the Commission's satisfaction that it is entitled to a higher rate of return.

8. Any proceeding designed to establish AT&T's entitlement to such a higher rate of return should be a separate proceeding involving only that issue -- not a tariff filing which, even if suspended, will become effective 90 days after the suspension order and will present the Commission with a fait accompli of a rate of

return substantially higher than that prescribed by the Commission. The procedure suggested herein which would, in effect, require AT&T first to seek leave to file rates based on a rate of return in excess of the 8.5-9 percent now in effect, after justifying that it is entitled to a higher rate of return, would be fully consistent with the decision of the U. S. Court of Appeals for the Second Circuit in AT&T v. FCC, 487 F.2d 864 (1973). In that case, the Court of Appeals held that the Commission had no authority to require AT&T to obtain permission for the filing of rate changes in tariffs which were under investigation as part of a general review of AT&T's rate levels and rate structure.

8. However, the Court distinguished that situation from one in which the agency prescribed the rates to be charged by the carrier, relying on Permian Basin Area Rate Cases, 390 U.S. 747. In that case, a moratorium on rate changes by gas companies was imposed after the Federal Power Commission had prescribed an agency-made rate pursuant to its prescription power, i.e., after a full hearing and determination that the prescribed rate was just and reasonable. This is precisely the situation now before the Commission. In the MTS case, after a full hearing, the Commission determined that a rate of return of 8.5-9 percent was just and reasonable for AT&T's interstate services. This determination made, AT&T may not lawfully increase the Commission prescribed rate of return by the device of

filing a tariff rate based on a higher rate of return. To permit AT&T to do so would, in effect, force the Commission to accept the carrier-established much higher rate of return subject only to a 90-day suspension and a subsequent hearing which may take years to conclude. All the while the higher rate of return would be in effect even though conditioned upon the inadequate remedy of accounting and refund.

9. The Commission's power to reject any such result which would undermine, if not destroy, its prescription authority is further supported by the Supreme Court's decision in FPC v. Tennessee Gas Transmission Company, 371 U.S. 145 (1962). In that case, Tennessee Gas filed rate increases predicated on a claim to a 7 percent rate of return on investment. The rate went into effect after statutory suspension and subject to refund. After hearings, the FPC, treating separately the rate of return issue, found that 7 percent was excessive and prescribed a 6-1/8 percent rate of return as reasonable. At the same time, the FPC ordered an interim rate reduction and an immediate refund of the amounts collected in excess of the lower rate of return, but deferred the remainder of the proceeding. The Supreme Court held that this was an appropriate exercise of the power granted the FPC by the Natural Gas Act. In approving the immediate refund, the Supreme Court observed

"To do otherwise would have permitted Tennessee Gas to collect the illegal rate for an additional 18 months 8/ at a cost of over $16,500,000 to consumers. True, the exaction would have been subject to refund, but experience has shown this to be somewhat illusory..."

"8/ The cost of allocation issue was decided 18 months following the Commission's decision on rate of return, and substantial issues on the cost-of-service question are still unresolved. If the interim order had not been entered the illegal rate would have been in effect 22 months, with an excessive return of some $20,000,000."

This is largely the situation now confronting the Commission. The Commission has prescribed an 8.5-9 percent rate of return, as the first step in a still unadjudicated proceeding involving other issues. Now, AT&T has confronted the Commission, and the public, with a rate predicated on a 10.5-11 percent rate of return. To accept it would amount to confessing that the Commission lacks the power to enforce its prescription authority. But the Commission is not that helpless. Like the FPC, it has sufficient power under the Communications Act, the Permian Basin case, supra, and the Second Circuit Court of Appeals' decision in the AT&T case, supra, to reject a tariff rate admittedly predicated on a rate of return substantially higher than the rate prescribed by the Commission in a still unadjudicated proceeding.

Accordingly, AT&T's proposed private line rates submitted in Transmittal No. 12241 should be rejected as not in conformity with the rate of return established by a binding and outstanding

Commission prescription made after a full hearing.

Respectfully submitted,

Ad Hoc Telecommunications Committee

By Jeremiah Courtney
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Dated: January 28, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	Transmittal No. 12241
	)	
Revisions to Tariffs F.C.C. Nos. 259, 260, and 263	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT	)	Docket No. 18128
	)	
Revisions of Tariff F.C.C. No. 260, Private Line Services, Series 5000 (TELPAK)	)	

To: The Commission

PETITION TO REJECT OR SECURE WITHDRAWAL, OR TO SUSPEND AND ORDER AN ACCOUNTING, AND TO INVESTIGATE INCREASED RATES

Aeronautical Radio, Inc. (ARINC), by its attorneys, hereby petitions the Commission to investigate in Docket No. 18128 the lawfulness of the rate increases for series 5000 ("TELPAK") private line services and teletypewriter station equipment filed by the American Telephone & Telegraph Company (AT&T) on January 3, 1975, by AT&T Transmittal No. 12241, to reject or to secure withdrawal of these rate increases without an evidentiary hearing, or in the alternative,

to suspend the rate increases for three months during the investigation, and, if the investigation has not been concluded and an order made within the period of suspension, require the carrier to keep accurate account of all amounts received by reason of such increases, specifying by whom and in whose behalf such amounts were paid, and upon completion of the investigation and decision, require the carrier to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased charges as by its decision shall be found not justified.* In support of this petition, ARINC shows the following:

Preliminary Statement

On January 3, 1975, AT&T filed its fourth set of rate increases for Telpak and its second set of rate increases for teletypewriter station equipment over the past seven years -- none of which have yet been found to be just and reasonable by the Commission. These most recent increases in Telpak and teletypewriter rates are part of a general rate increase filing also involving MTS, WATS, and individual private line channels.

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* ARINC hereby respectfully requests that §1.44 of the Commission's Rules be waived insofar as a petition to reject a tariff on technical grounds should be directed to the Chief of the Common Carrier Bureau (§0.297 of the Commission's Rules; see 39 F.C.C.2d 631, 639 n.2 (1973), in order that these closely related requests may be considered together at the Commission level.

for Telpak and teletypewriter services, AT&T by this filing seeks a flat 7.8% increase on all rate elements, which, when combined with the four prior rate increases for Telpak and teletypewriter services, represents an increase of 114% in common carrier charges to ARINC for private line services in less than seven years. AT&T seeks this rate increase even though the validity of the first three Telpak rate increases and the prior teletypewriter rate increase has not been determined, and these earlier increases are currently under investigation and subject to accounting orders in Docket No. 18128.

The evidence in Docket No. 18128 establishes the unlawfulness of the prior rate increases and provides adequate justification for the rejection of these still higher rates. Moreover, AT&T has failed to establish prima facie that the increases in Telpak and station equipment charges would be reasonable as required by Section 61.38 of the Rules. In the absence of such a showing, the Commission need not embark on an evidentiary hearing as to the reasonableness of the proposed Telpak rates, but can reject them summarily. Because of the disruption which the Telpak rate increases would cause to the Commission's ongoing investigation of Telpak rates in Docket No. 18128, the public interest requires the Commission to exercise this option to reject without a hearing.

Background

ARINC is the communications company of the air transport industry providing a variety of communications services to all sectors of the industry. In providing these services, ARINC operates its own air-ground and point-to-point radio facilities and leases from AT&T and other carriers a network of private line services which is surpassed in size only by that leased by the federal government. As such, ARINC has been an active participant in present and past Commission proceedings relating to private line rates, including the Private Line Cases (Docket Nos. 11645-46), Telpak Case (Docket No. 14251), the General Telephone Rate Investigation (Docket No. 16258), and the present Private Line/ Telpak Case (Docket No. 18128). The charges to ARINC for private line services are now some $60 million, but the increases now proposed for Telpak and teletypewriter equipment would increase the charges to ARINC for private line service by $3.9 million annually.

This current round of rate increases must be viewed against the background of rate changes by AT&T over the past decade. AT&T made substantial reductions in interstate long distance telephone service in 1965, 1967, 1968, and 1969. On November 20, 1970, AT&T filed an increase in MTS rates which the Commission allowed to become effective in part in

two steps in Docket No. 19129 upon the Commission's finding that AT&T was entitled to an increased rate of return. Significantly, these MTS increases were the first increases for this service since 1953.

On the other hand, since the Commission last prescribed rates for private line services in the Private Line Cases in 1963, 34 F.C.C. 217 (1973), aff'd sub nom. Wilson & Co. v. United States, 335 F.2d 788 (7th Cir. 1964), cert. denied, 380 U.S. 951 (1965), AT&T has repeatedly increased its rates for private line services.

1. In August 1967, charges for single channel telegraph services were increased, and pursuant to Commission order, Telpak A and B were eliminated, resulting in increased private line charges.

2. On September 1, 1968, rates for Telpak C and D were increased some 40%.*

3. On November 1, 1968, teletypewriter station equipment charges were increased some 30%.

4. On February 1, 1970 -- only 17 months after the first round of increases -- Telpaks C and D rates were increased another 37% for an overall increase of some 92%.*

5. In May 1972, AT&T imposed another round of rate increases for private line services, including 150% increases

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*Based on ARINC's utilization as of March 1971.

in rates for Telpak installation charges, 14.3% increases in rates for Telpak main serivce terminals, and 33% rate increases for Telpak additional service terminals. This represented another 5% rate increase in ARINC's charges, and an overall doubling of charges compared with the original Telpak rates.*

Now, AT&T has filed for an additional 7.8% across-the-board rate increase for all interstate private line services, including Telpak and teletypewriter station equipment. AT&T estimates that its additional revenues from the private line rate increases alone will be $73 million at 1975 market levels. The impact of these rate increases on ARINC will amount to more than $3.9 million annually, based on repricing ARINC's March 1971 private line services. The following table summarizes the effect of these four rate increases on ARINC:

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*Based on ARINC's utilization as of March 1971.

	Original (Pre-Sept. 1968)	Interim* (Sept. 68)	Test Rate 3 (Feb. 70)	Present (May 72)	Proposed (March 75)
ARINC Private Line Charges	\$29.7M**	\$41.7M**	\$57.0M**	\$59.6M**	\$63.5M***
Amount of Increases Over Previous Rates		\$12.0M	\$15.3M	\$ 2.6M	\$ 3.9M
Percent of Increases Over Previous Rates		40%	37%	4.6%	6.6%
Total Amount of Increase		\$12.0M	\$27.3M	\$29.9M	\$33.8M
Total Percent of Increase		40%	92%	101%	114%

The Commission Should Reject, Without an Evidentiary Hearing, the Proposed Telpak Rate Increases as Inconsistent With Established Commission Policy and Regulations

There can be no doubt that the Commission has authority to reject this tariff without an evidentiary hearing. As stated by Judge Leventhal in Municipal Light Boards v. FPC:

> "There are occasions when an agency may dispose of a controversy on the pleadings without an evidentiary hearing when the opposing presentations reveal that no dispute of fact is involved, but only a question of law or administrative policy

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* Includes the November 1968 teletypewriter station equipment rate increases.

** See ARINC Exhibit 10, p.2 (Docket No. 18128).

*** Calculated by increasing the May 1972 charges to ARINC for interstate Telpak and station equipment by 7.8%.

> of such a nature that there is neither a dispute as to material facts nor a need to ventilate the underlying facts in aid of policy determination." 450 F.2d 1341, 1345 (D.C. Cir. 1971) (emphasis added).

A tariff may be rejected outright by the Commission "where the filing is so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket." Id. at 1345. See also Press Wireless, Inc. v. FCC, 264 F.2d 372 (D.C. Cir. 1959). Indeed, "an agency has the power and in some cases the duty to reject a tariff that is demonstrably unlawful on its face." Associated Press v. FCC, 448 F.2d 1095, 1103 (1971) (emphasis added). Most recently, the Second Circuit reemphasized the Commission's authority to reject a tariff "that is demonstrably unlawful on its face." American Telephone & Telegraph Co. v. FCC, 487 F.2d 864, 880 n.33 (2d Cir. 1973).

The present filing ignores totally the public interest in the necessity to maintain Telpak rates at competitive levels in order to retain revenues which might be lost to private microwave, but which contribute to common costs, thus making possible lower rates for all customers. Instead, AT&T has simply imposed a sweeping 7.8% across-the-board rate increase

on all private line services -- even those which are subject to competition -- and has included Telpak in this generalized treatment.

In AT&T Vice President James R. Billingsley's letter to Chairman Wiley, dated January 3, 1975, which was transmitted with AT&T's rate increase filing, AT&T recognizes that structural revisions within private line services would be inappropriate "[i]n view of the pendency of several Commission proceedings relating to the rate structure of the private line services." The only apparent justification for the rate treatment accorded Telpak and the other private line services is contained in the same letter as follows:

> "Rather, for purposes of this overall rate increase filing, we are generally applying the same percentage increase to the various rate elements in private line services. However, following completion of further studies in this area, <u>including review of competitive conditions with respect to those services</u>, future revisions in the private line rate structure may well be appropriate in a subsequent filing" (emphasis added).

ARINC submits that this almost casual approach to Telpak rates is clearly at odds with the Commission's determination in the original Telpak case that there is a competitive necessity for Telpak C and D and the evidence in Docket No. 18128 that prior rate increases have not been shown to be just and reasonable. The proven cost of private

microwave systems cannot be disregarded in establishing the reasonableness of Telpak rates.

In addition, the Commission has adopted stringent regulations requiring carriers to file extensive and detailed cost, revenue, and market studies to justify substantial rate increases, such as those here involved. See §§61.38, 61.69 of the Commission's Rules. As the Commission explained in adopting these Rules:

> "Rates that are filed with this Commission must be able to withstand the statutory tests of Sections 201(b) and 202(a) of the Act. While there is no requirement for Commission approval before a rate can become effective, it is within our authority to require that a rate be supported by sufficient information to indicate that the rate has prima facie support." Tariffs, 25 F.C.C.2d 957, 965 (1971).

Failure of the carriers to submit sufficient data to show this "prima facie support" would be grounds for the Commission to order the rate increases cancelled without the necessity of an extensive evidentiary hearing. * See §61.69 of the Commission's Rules; Tariffs, supra, at 973.

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* ARINC supports also the "Petition to Reject, Require Withdrawal, or for Suspension, Investigation, and Hearing or Proposed Telpak Rate Increases" filed this date on behalf of the Air Transport Association of America wherein the analysis by Mr. Charles W. King of AT&T's supporting data establishes further grounds for rejection.

Here, AT&T's justification for the rate increases essentially relates to the earnings and capital requirements of the Bell System and apparently ignores the competitive market for Telpak service. Whatever the merits of AT&T's contentions that overall rate of return should be raised, AT&T has not provided any justification whatsoever for including Telpak within the services from which increased revenues are attempted to be obtained. In particular, AT&T does not consider how Telpak can compete with private microwave systems at the increased rates.

In the absence of any factual disputes about the above questions, the Commission has authority to rule that, as a matter of policy and law, the rate increases as they apply to Telpak must be rejected, whatever its determination may be with regard to the other elements of AT&T's filing.

The Proposed Rate Increases Should Be Rejected To Permit an Orderly Adjudication of the Rate Increases Already in Issue in Docket No. 18128.

The Commission should exercise its authority to reject the Telpak and teletypewriter rate increases in order to avoid a further disruption of Docket No. 18128, since if they became effective now, they would require reopening of the record in that case for further evidence on the lawfulness of the new rates. As the Commission recognized in connection with the third rate increase, which became effective in May 1972, "any

further tariff revisions relating to the services under investigation will unduly disrupt or delay the conclusion of the case." 33 F.C.C.2d 522, 524 (1972)(emphasis added). In recognition of the disruptive impact of further Telpak rate increases, the Commission at that time required that AT&T obtain special permission to make any further changes in the tariff prior to the entering of a final decision in Docket No. 18128. Later, the Court of Appeals held that the Commission lacked statutory authority to impose this special permission requirement. American Telephone & Telegraph Co. v. FCC, 487 F.2d 865 (2d Cir. 1973). However, the decision by the Court of Appeals did not in any way impair the Commission's determination that further changes in the Telpak tariff would disrupt Docket No. 18128. See id. at 881 n.34.

Indeed, the third round of rate increases was, if anything, less disruptive of Docket No. 18128 than are the current increases. The May 1972 increases were filed in the midst of cross-examination of AT&T's rebuttal witnesses and substantial disruption and delay of the hearing did, in fact, occur when the Commission set them for hearing in Docket No. 18128, thus requiring additional months of evidentiary hearings.

The present rate increases have been filed after the hearing has been completed, proposed findings and reply findings have been filed, and the Chief of the Common Carrier Bureau is engaged in the preparation of his recommended decision in the case.

Docket No. 18128 is investigating fundamental questions of ratemaking as applied to the private line services as well as specific questions relating to specific private line rates. The filing of these new rates unfairly disrupts the Commission's orderly determination of these issues. Furthermore, if the rates are not rejected or withdrawn, ARINC and the other customers of AT&T would have to adjust their communications services under the new rates at a time when the final resolution of Docket No. 18128, with possible further rate adjustments, is imminent.

The Commission has determined that "effective testing of the complex economic theories of costing and pricing which have been advanced . . . can best be accomplished by relating the principles advocated to specific rate proposals." Statement of Ratemaking Principles, 18 F.C.C.2d 761, 763 (1969). The hearings in Docket No. 18128 have had before them "specific rate proposals" in the form of the present Telpak rates and their three predecessors. These rates have supplied the context for determining the broader issues now pending in Docket No. 18128 - the appropriate levels and rate relationships among AT&T's classes of service, and the correct use of incremental and fully distributed cost studies.

A recommended decision in Docket No. 18128 is now in sight, but if the Commission permits AT&T to inject further increased rates at this point, the entire proceeding will be disrupted. Much of the vast amount of the Commission's time

spent considering and analyzing the present rates will become a waste. By attempting to file rate increases at this stage in Docket No. 18128, AT&T is engaging in a disruption of the proceeding tantamount to interference with the Commission's duty to decide the case.

In addition, the proposed rates will force AT&T's customers to engage in a costly and burdensome reassessment of their utilization of Telpak and other private line services. The new rates involve new relationships among the various private line services and the switched services, MTS and WATS, and alternative communications services such as private microwave and the specialized and domestic satellite communications services. These new relationships must be carefully evaluated as shifts and repressions in usage are inevitable, even on a short run basis while awaiting the outcome of Docket No. 18128. It is not conducive to the ends of justice to impose upon the public every change in public utility rate levels, especially when the rates have been constantly increasing. In view of numerous and repeated rate increases for the private line services since 1967, the public is entitled to a respite pending the conclusion of the Private Line/Telpak investigation. The Commission should therefore reject the increased tariffs for Telpak and teletypewriter station equipment or secure their voluntary withdrawal by AT&T.

At a Minimum, the Commission Should Suspend the Proposed Rate Increases and Include the Telpak and Teletypewriter Rate Increases Within the Investigation in Docket No. 18128

As shown above, the best course for the Commission to follow, and one for which it has a sound legal basis, is the rejection of the Telpak and teletypewriter rate increases without an evidentiary hearing. However, if the Commission does not take this course of action, these rate increases, which will cost ARINC and the air transport industry almost $4 million annually and which are accompanied by some 8000 pages of material, must be suspended for the full statutory period of three months, set for investigation in Docket No. 18128, and be subject to an accounting order pursuant to Section 204 of the Act.

Three times before, the Commission has found it necessary to exercise its §204 authority concerning Telpak rate increases. On April 12, 1968, the Commission suspended for three months the first round of Telpak increases and began an investigation of their lawfulness because it could not determine, while the record in Docket No. 16258, regarding Telpak C and D, was not complete, whether "the revised schedules are or will be just and reasonable or otherwise lawful." 33 Fed. Reg. 5900 (1968). Later, the Commission ordered an accounting of the Telpak rate increases, and suspended and ordered an accounting of proposed rate increases for teletypewriter station equipment. 13 F.C.C.2d 853 (1968).

When AT&T filed a second increase in Telpak rates, the Commission again, on October 29, 1969, suspended the rates for the maximum statutory period and ordered an accounting. The Commission said, "The lawfulness of the revised tariff schedules presently before us will be resolved upon the record made in Docket No. 18128." 20 F.C.C.2d 383, 387 (1969).

The third round of Telpak rate increases, accompanied by rate increases for voice grade terminal charges, CCSA service, and installation charges, was filed December 6, 1971, after 109 days of hearings in Docket No. 18128. The Commission suspended these increases until May 4, 1972, and joined them with the earlier increases for resolution in Docket No. 18128, subject to an accounting order. 3 F.C.C.2d 522 (1972).

Similarly, when AT&T filed its earlier increase in charges for the teletypewriter station equipment the Commission first obtained from the carrier a one-year postponement, then suspended the increased charges for three months and ordered that these rates be considered in Docket No. 18128. 13 F.C.C.2d 853 (1968). As a minimum, the same remedy is still appropriate.

Because of the intimate relationship between the rate levels for Telpak and the ability of Telpak to meet competition from private microwave service it would be impossible to consider this fourth set of increases in isolation from the record already developed in Docket No. 18128. Similarly, the record in Docket No. 18128 shows that AT&T's teletypewriter

rates are already so high as to create significant diversion from its service. Once again, therefore, if the Commission does not reject these rate increases, it must include them among the issues for determination in Docket No. 18128, and reopen the record in that proceeding. In order to protect users during the pendency of the further hearings involved, the Commission should, of course, impose the usual accounting order.

WHEREFORE, for the reasons set forth above, ARINC urges the Commission to reject or secure the withdrawal of the Telpak and teletypewriter rate increases contained in AT&T's January 3, 1975, filing or, in the alternative, to suspend them for the full statutory period, investigate them in Docket No. 18128, and subject them to an accounting and refund thereafter.

Respectfully submitted,

AERONAUTICAL RADIO, INC.

By /s/Charles R. Cutler
Charles R. Cutler

/s/John L. Bartlett
John L. Bartlett

/s/Michael Yourshaw
Michael Yourshaw

of
1776 K Street, N. W.
Washington, D. C. 20006

Its attorneys

January 28, 1975

In the Matter of)
)
AMERICAN TELEPHONE AND TELEGRAPH)
COMPANY, LONG LINES DEPARTMENT)
)
Increased Charges for MTS, WATS and Private)
Line Service, Tariff F. C. C. Nos. 259, 260,)
and 263, AT&T Transmittal No. 12241)

To: The Commission En Banc

PETITION TO REJECT OR
SUSPEND RATE INCREASES

Aerospace Industries Association of America, Inc. ("AIA"), on behalf of its members, pursuant to Sections 201(b), 202, 204 and 205 of the Communications Act of 1934, as amended, and Section 61.38 of the Rules and Regulations of the Commission, respectfully petitions the Commission to reject or suspend the further increased charges for (1) long distance message telecommunications service (MTS), (2) wide area telecommunications service (WATS), and (3) private line service, as set forth in tariff material filed and described under Transmittal No. 12241, dated January 3, 1975, by the American Telephone and Telegraph Company ("AT&T") to be effective March 4, 1975.

AIA moves that the filing for further increased charges be rejected on the ground that the proposed rates are based on a rate of return for

AT&T of 10.5-11.0% which is in excess of the rate of return of 8.5-9.0% authorized and prescribed by the Commission in November, 1972, AT&T, 38 FCC2d 215.[1/] AIA further moves that if the proposed increase in rates is not rejected, it should be suspended for the maximum statutory period on the ground that the rates have not been shown to be just and reasonable. In this event, due provision for accounting and refund, with interest at 9%, should be imposed.

I. Interest of AIA

AIA is organized as a non-stock, membership corporation under the laws of the State of New York and is authorized, as a non-profit corporation, to conduct its affairs in the District of Columbia. AIA is the national trade association of the manufacturers or aircraft, missiles, spacecraft, propulsion, navigation and guidance systems, support equipment, accessories, parts, materials and components used in the construction, operation and maintenance of these aerospace products. Current membership of AIA includes 47 of the leading aerospace manufacturing companies plus their corporate divisions.

The significance of the aerospace industry to the national economy and the importance of communications to the successful operation of the AIA members has been fully detailed in pleadings filed by AIA in other

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1/ A breakdown of the proposed rates which reflects the increases attributable to the 10.5-11.0% rate of return is submitted infra, pp. 9-10.

Common Carrier proceedings, including Docket No. 18128. We shall not burden the record in this proceeding by repeating this information here. The impact of the proposed increase on the aerospace industry is apparent from the following schedule which lists the monthly costs (to the nearest $1,000) for December 1973 of nine companies for private lines and WATS interstate services less data sets, terminal devices and interstate tolls:

Boeing	$343,000
General Dynamics	36,000
Hughes	126,000
Lockheed	331,000
L. T. V. Aerospace	26,000
Martin Marietta	233,000
McDonnell Douglas	308,000
Rockwell	713,000
Thiokol	30,000
	$2,146,000

II. Background

The present filing by AT&T proposes a revised schedule of charges for interstate telecommunications services which it asserts are designed to produce a general net increase of 7.2% in revenues from such services. 2/

2/ In fact, the increased charges would result in revenue increases greater than 7.9%. See Statement of Charles W. King, submitted as an Attachment hereto.

The [illegible] proposed increase is the fourth increase sought by AT&T for private line services. The validity of the first three increases has not been decided but each such increase was included in the hearing and investigation in Docket No. 18128 concerning the lawfulness of the private line tariff schedules of AT&T, and were made subject to accounting orders in that proceeding. 3/ Because of the relevance to this proceeding of the prior rate increases sought by AT&T, we believe that a summary of the Commission's actions with respect thereto is warranted.

A. Prior FCC Actions Relating To AT&T's Proposed Rate Increases

On November 20, 1970, AT&T filed with the Commission, tariff revisions proposing to increase its interstate earnings by $545 million a year before federal income taxes. This filing contemplated an actual increase in revenues of $385 million and a reduction in costs of $160 million. It was based on a proposed rate of return of 9.5%. AT&T, 27 FCC2d 151, 152-53 (1971).

Upon consideration of the rates proposed, the Commission, by letter dated January 12, 1971, requested that AT&T postpone the full amount of the filed rate increases until the Commission could complete an expedited hearing on the overall earnings level. Implicit in the Commission's request

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3/ Memorandum Opinion and Orders, AT&T 13 FCC2d 853 (1968), AT&T 20 FCC2d 383 (1969) and AT&T 33 FCC2d 522 (1972).

"was the strong feeling that an increase of the magnitude first proposed, even with a 90 day suspension, was not warranted until it had been explored on the basis of a complete record . . ." 27 FCC2d at 153. The Commission was of the view, however, that a lesser increase might be filed and suggested to AT&T that it consider tariff revisions provided they would produce additional net earnings before federal income taxes of not more than $250 million. In so acting, the Commission made clear it was taking into account its previous decision in 1967 (Docket No. 16258, 9 FCC2d 30) in which it had found that the allowable rate of return for AT&T was within the 7.0-7.5% range for interstate services as compared to the 9.5% then claimed by AT&T, 27 FCC2d at 154.

In response to the Commission's proposal, AT&T agreed to postpone the effectiveness of its rate revisions and to file new rate increases providing for a total improvement in net earnings before federal income taxes of not more than $250 million. The Commission thereafter instituted an investigation into the lawfulness of these tariff revisions and suspended the rates with an accounting and refund order. AT&T, 27 FCC2d 149; AT&T, 27 FCC2d 151. Further, the investigation was divided into two phases. Phase I of the proceeding was devoted to the question of rate of return and Phase II was devoted to other matters that could affect AT&T's interstate revenue requirements. AT&T, 27 FCC2d at 156-57, 161-62.

On November 22, 1972, the Commission adopted and released its

Decision and Order in Phase I of the investigation, AT&T, 38 FCC2d 213. It concluded (38 FCC2d at 245):

> ... that the fair rate of return to Bell on its interstate and foreign communication services is 8.5%. We consider that this return is the minimum required by Bell to enable it to attract capital at a reasonable cost and to maintain the credit of Bell; and to assure continued, adequate and safe interstate and foreign communications service to the public and to provide for necessary expansion to meet future requirements.

The minimum overall return was computed as follows:

Item	Proportion of Capital	Cost Rate	Proportion of Total Cost
Debt	45%	6.0%	2.7%
Total Equity	55%	10.5%	5.8%
Total Cost			8.5%

(38 FCC2d 213, 241).

At the same time the Commission determined that it "should adopt an appropriate range of return by which to measure the reasonableness of Bell's future earnings and revenue requirements," (38 FCC2d at 245) (Emphasis supplied). Accordingly, it specified "a range of 8.5-9.0% as the range of reasonableness for the earnings of Bell ..." (Id.).

Based on these determinations, the Commission gave AT&T permission to file tariff revisions which would enable it to increase interstate earnings to the 8.5% level. As a result, AT&T was permitted to file rate increases to produce $145 million of additional net earnings before income

The tariff schedules filed on [illegible] 20, 1973, however, which were predicated on a rate of return of [illegible]%, were cancelled.

Various parties filed petitions for reconsideration of the Commission's Decision and Order. In a Memorandum Opinion and Order dated August 2, 1973, AT&T, 42 FCC2d 293, the Commission refused to change its "prescription of 8.5-9.0% as the range of reasonableness," 42 FCC2d at 300.[4/] Thereafter, no further increases in interstate rates were requested until the current filing.

B. The Current Filing

On January 3, 1975, some 26 months after the Commission's decision prescribing a 8.5-9.0% rate of return, AT&T filed the current tariff revisions to be effective March 4, 1975. The filing anticipates additional revenues of $717 million in interstate revenues before federal income tax and additional net earnings after taxes of $433 million.

The basis for the increased rates is contained in a letter attached to the filing by AT&T Vice-President, James R. Billingsley. He states:

> The proposed rate changes are the consequence of the extraordinary inflationary pressures that have been

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4/ The Commission's Decision and Order is under review by the United States Court of Appeals for the District of Columbia Circuit, Nos. 73-1045, 73-2051. Significantly, the only substantive attack on the Commission's findings regarding a fair rate of return is by Ralph Nader who argues for a reduction from 8.5% to 8.2%.

besetting the economy. The impact of this inflationary period has been an escalation in the Bell System's labor costs and other operating expenses, a significant rise in the cost of construction needed to provide the plant and equipment required for service to the public, and a dramatic upsurge in interest rates and the cost of capital.

Throughout his statement, however, Billingsley recognizes that the proposed increase in rates is based on a rate of return greatly in excess of the rate of return authorized by the Commission in its 1972 decision. Thus, he continually alludes to changed circumstances or conditions to justify the filing:

> Current conditions in the financial markets have created an urgent need for a level of earnings higher than the Commission allowed in 1972, to enable the Bell System to raise required capital.
>
> ***
>
> There have been dramatic changes in financial and economic conditions since the Commission's rate-of-return decision in November 1972.
>
> ***
>
> Today the cost of new capital is sharply higher than the levels of 1972.

In conclusion, Billingsley admits that the proposed rates are based on a dramatic and unilateral change in the rate of return previously authorized by the Commission:

> These economic and financial circumstances now require an interstate earnings level of 10-1/2 to 11 percent on investment, in order to sustain the financial integrity of

the Bell System and to permit the attraction of necessary debt and equity capital under prevailing conditions in the money markets. Accordingly, we are today filing rates designed to produce interstate earnings within that range.

As shown in the following tabulation, these expected changes, along with their associated tax effects, would yield an overall rate of return of 10.75 percent. The support material submitted by AT&T with its tariff filing indicates that the increased rates would stimulate a price-elastic contraction in demand which would reduce operating expenses by an estimated $192 million and the net investment by an estimated $880 million.

Bell System Interstate Services - 1975 View
(Annual Level - Millions)

	At Present Rates 5/	At Proposed Rates 8/	Difference
Total Revenues	$ 9,097	$ 9,814	+$ 717 6/
Expenses			
Except Taxes	5,983	5,791	- 192 6/
State and Local Taxes	754	791	+ 37 6/
Federal Income Taxes	705	1,144	+ 439 6/
Total Expenses	7,442	7,726	+ 284
Net Earnings	1,655	2,088	+ 433
Average Net Investment	20,246	19,366	- 880 7/
Net Earnings to Average Net Investment	8.2%	10.75%	

5/ Bell Statement 2, Attachment A, page 1.

6/ Bell Statement 6, Attachment K, page 1.

7/ Cost Data Volume 1, Section 2, page 1.

8/ Computed by applying "adjustment" to values at present rates.

[illegible] that the price-elastic demand responses identified by [illegible] are [illegible] related to the increase in rates, a rate increase sufficient to earn 8.75 percent return on investment (the midpoint of the range of rate of return authorized by the Commission in Phase I of FCC Docket No. 19129), would amount to $163 million, or 1.8 percent. This increase contrasts with the 7.9 percent 9/ rate increase requested by AT&T.

Bell System Interstate Services - 1975 View
(Annual Level - Millions)

	At Present Rates 10/	At Rates to Generate a 8.75% Return	Difference
Total Revenues	$ 9,097	$ 9,260	+$ 163
Expenses			
Except Taxes	5,983	5,939	- 44
Income Variable Taxes	1,459	1,567	+ 108
Total Expenses	7,442	7,506	+ 64
Net Earnings	1,655	1,754	+ 99
Average Net Investment	20,246	20,046	- 200
Net Earnings to Average Net Investment	8.2%	8.75%	

III. The Proposed Rate Increases Should Be Rejected Because They Fail to Comply With the Communications Act and The Decisions and Regulations Issued Thereunder

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9/ Computed on the ratio of $717 million, the amount of revenue increase for 1975 shown in Bell Statement G, Attackment K, page 1 over $9,097 million, the revenue forecast for 1975 at present rates, as shown in Bell Statement 2, Attachment A, page 1.

10/ Bell Statement 2, Attachment A, page 1.

A. The Commission Should Reject the Proposed Rate Increases Since They Are Based on a Rate of Return in Excess of the 8.5-9.0% Range Prescribed by the Commission

A significant portion of the huge $717,000,000 increase involved in the present filings results from Bell's proposal to increase the overall rate of return on its interstate telephone services from the 8.5-9.0% range prescribed in this Commission's decision in Phase I of Docket No. 19129 (AT&T, 38 FCC2d 213) to a range of 10.5-11.0%. See Bell Statement 5, Attachment P. For the reasons detailed below it is submitted that no part of Bell's overall rate increase stemming from its proposed increase in rate of return can be made effective except pursuant to an express authorizing order of the Commission after appropriate proceedings held in accordance with the provisions of Section 205 of the Communications Act of 1934, as amended, 47 U.S.C. §205. Moreover, assuming arguendo that the Commission possesses the power to issue such an order prior to the completion of Section 205 proceedings, no showing has been made in the Bell filings which could conceivably justify an order by the Commission permitting overall rate increases which are based upon the requested increase in rate of return.

1. The Governing Law

The rate filing provisions of the Communications Act indicate that Congress struck a "careful balance of interests" in devising the statutory scheme. United States v. SCRAP, 412 U.S. 669, 697 (1973). In general,

carriers may initiate changes in their rates by filing new tariffs without first obtaining Commission approval. 47 U. S. C. 203; American Telephone and Telegraph Co. v. FCC, 487 F. 2d 865 (2d Cir. 1973). However, such rate increases must provide a specified notice period. 47 C. F. R. 61.58; 47 U. S. C. 203. Thereafter, the Commission may suspend the proposed rates for a statutory period up to three months and order an investigation into their lawfulness. 47 U. S. C. 204; American Telephone and Telegraph Co. v. FCC, 487 F. 2d 865 (2d Cir. 1973). After the statutory period expires the rates go into effect pending the outcome of the Commission's investigation. The carriers, however, may be required to keep account of increases collected so that refunds may be made, with interest, if the new rates are found to be unjustified, 47 U. S. C. 204.

Following a full investigation and hearing the Commission has the authority, where it finds that the carrier made rate is or will be in violation of the provisions of the Act "to determine and prescribe what will be the maximum or minimum or maximum and minimum, charge or charges to be thereafter observed . . ." 47 U. S. C. 205.[11/] Finally, Section 408 of the

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11/ Section 204 of the Act provides that where the Commission holds a hearing on a carrier proposed rate it can, after the hearing, "make such order with reference thereto as would be proper in a proceeding initiated after it became effective." In other words, a Commission determination of the propriety of a carrier's rates after hearing constitutes agency made rates regardless of whether the investigation was initiated by the carrier or the agency.

Communications Act of 1934, as amended, provides that all Commission orders, other than those for the payment of money including those prescribing rates are "to continue in force until its further order" unless the Commission specifies the period of time of the order's effectiveness therein. 47 U. S. C. 408.

These provisions of the Communications Act, like those of a number of other federal regulatory statutes providing for rate regulation, have as their basic intent the prevention of a situation where an agency's prescription of rates after a lengthy hearing could be nullified by a carrier filing of new and higher rates than those prescribed and putting them into effect after the limited notice or suspension periods applicable to the very different procedures involving company made rates. The statutory scheme was and is that, unless and until the agency determines the appropriate rates for a regulated company after full proceedings, the company, within prescribed limits of notice and suspension, will be permitted to put into effect new rates. Once such a final agency determination has been made, however, rate changes inconsistent therewith can only be made effective after an appropriate agency order authorizing such action.

There is nothing novel in this basic distinction between the procedures applicable to changes in agency made rates as contrasted with company made rates, or the necessity of maintaining the continuing effectiveness of agency decisions prescribing a specific rate. As the ICC said long ago in

construing similar statutory provisions "to say that the Commission's order may be defeated merely by publication and filing of a rate higher than that prescribed by the order is to say also that the shipping public is not entitled to the protection of this Commission's orders during the period they are in force . . .", City of Springfield, Tenn. v. Louisville N. R. Co., 53 ICC 603, 605, 606 (1919). See also Minimum Rates Applicable to Air Freight, Order No. E-17370, 34 C. A. B. 263 (1961). Furthermore, the Supreme Court has expressly held in United States v. Corrick, 298 U. S. 435, 439-440 (1936) in construing virtually identical provisions of the Packers and Stockyard Act of 1921, that where the Secretary of Agriculture prescribes the just and reasonable rates which thereafter are to be charged, such rates become the only lawful rates and so remain until further order of the Secretary. See also Arizona Grocery Co. v. Atchison T. & S. F. Ry. Co., 284 U. S. 370 (1932).

The claim that a statutory rate filing provision such as Section 204 of the Communications Act gives a regulated company the unlimited right to file and put into effect new rate increases inconsistent with previous orders of the Commission has been expressly rejected by the Supreme Court of the United States. See Permian Basin Area Rate Cases, 390 U. S. 747 (1968). Thus, in rejecting a tax on a moratorium on the filing of any new rates in excess of those prescribed in the Commission's area rate proceeding in the Permian case, the Supreme Court stated (390 U. S. at 778-779):

> The validity of the moratorium order turns principally upon construction of §§ 4 and 5 of the Act. Section 4(d) provides that no modification in existing rate schedules may be made by a natural gas company except after 30 days' notice to the Commission. When the Commission receives such notice, it is permitted by § 4(e), upon complaint or on its own motion, to suspend the proposed rate schedule for a period not to exceed five months. The Commission is to employ the period of suspension to conduct hearings upon the lawfulness of the proposed rates. If at the end of the suspension period appropriate orders have not been issued, the proposed rate schedule becomes effective, subject only to a refund obligation. In contrast, § 5(a) permits the Commission, upon complaint from a public agency or a gas distributing company, or on its own motion, to conduct proceedings to determine whether existing rates are just and reasonable, and to prescribe rates "to be thereafter observed and in force ..." These investigatory powers are not conditional upon the filing by a natural gas company of any proposed change in existing rates.
>
> Certain of the producers urge that §§ 4 and 5 must in combination be understood to preclude moratoria upon filings under § 4(d). They assert that the period of effectiveness of a rate determination under § 5(a) is limited by § 4(e); they reason that § 4(d) creates an unrestricted right to file rate changes, and that such changes may, under § 4(e), be suspended for a period no longer than five months. If this construction were accepted, it would follow that area proceedings would terminate in rate limitations that could be disregarded by producers five months after their promulgation. The result, as the Commission observed, would be that "the conclusion of one area proceeding would only signal the beginning of the next, and just and reasonable rates for consumers would always be one area proceeding away." 34 FPC, at 228.

Exactly the same rationale is applicable to the provisions of Section 204, 205 and 408 of the Communications Act of 1934, as amended, cited above.

It is equally clear that this rationale is applicable pro tanto in situations where the agency rate prescription does not purport to govern all facets of a carrier rate increase but is limited, as in the present situation, to a prescription of the appropriate rate of return upon which a carrier may predicate valid rates for interstate service subject to agency jurisdiction. See FPC v. Tennessee Gas Transmission Company, 371 U. S. 145 (1962). Cf., FPC v. Natural Gas Pipeline Co., 315 U. S. 575, 584 (1941). The Tennessee case, supra, presented a situation strikingly analogous to the present one. There, the Commission, faced with a general rate increase by a major pipeline, designated for prior hearing and determination the issue of the reasonableness of the pipeline's proposed rate of return. At the same time it deferred until subsequent determination its conclusion as to a number of cost of service and cost allocation issues also presented by the rate filing. The Commission found that the proposed 7% rate of return was excessive and directed the pipeline to file reduced rates reflecting the maximum rate of return found to be appropriate and to refund the difference between the higher rate already collected and that prescribed. The Supreme Court affirmed the Commission decision over the objections that it could not issue a binding final order which did not resolve all of the issues presented by the rate filing. In so doing the Court held (371 U. S. at 154-155):

> Faced with the finding that the rate of return was excessive, the Commission acted properly within its statutory

power in issuing the interim order of reduction and refund, since the purpose of the Act is "to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges ..." Id. 390 US at p. 388. To do otherwise would have permitted Tennessee Gas to collect the illegal rate for an additional 18 months at a cost of over $16,500,000 to consumers. True, the exaction would have been subject to refund, but experience has shown this to be somewhat illusory in view of the trickling down process necessary to be followed, the incidental cost of which is often borne by the consumer, and in view of the transient nature of our society which often prevents refunds from reaching those to whom they are due. 12/

2. The Commission's Actions in Docket No. 19129

In the earlier discussion we have detailed prior Commission actions with respect to AT&T proposed rate increases (see pp. 4-7). Briefly stated, based upon its careful and fully documented analysis, the Commission in its Decision rejected AT&T's claims for a rate of return of 9.5%, including a return on equity of at least 12.5% (see 38 FCC2d at 221). Instead it concluded that "the fair rate of return to Bell on its interstate and foreign

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12/ See also F.P.C. v. Natural Gas Pipeline Co., 315 U.S. at 585:

> ... when existing rates are found to be unjust and unreasonable, an order decreasing revenues may be filed without establishing a specific schedule of rates. Since such an order may be in the interests of the public, as well as the regulated company, and is in harmony with the purposes of the Act, it is one which the Commission has discretion to make under § 16 as appropriate to carry out the provisions of the Act.

communication services is 8.5%," 38 FCC2d at 245, ¶105. On the basis of this conclusion it "cancelled" and declared "null and void" the $250,000,000 rate increase Bell had made effective subject to accounting and refund as of January 26, 1971. Instead Bell was authorized to file new rates designed to produce the $145,000,000 the Commission found was required for Bell to achieve "the 8.5% rate of return on its interstate operations we have found herein to be appropriate" 38 FCC2d at 250-251.

While the Commission opinion thus prescribed rates based upon an 8.5% overall rate of return, it also concluded that the "range of reasonableness" for Bell's earnings on its interstate operations would be 8.5% to 9.0% and that it would, therefore, consider any future increase in Bell's earnings within this range "to be acceptable without regulatory action on our part" 38 FCC2d at 245, ¶107. This meant that, with the same capital structure and embedded debt cost, the return on equity could increase from 10.5% without further Commission action to approximately 11.45%.[13/] Establishing this limited range for future permissible increases in return

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13/ This calculation is derived as follows:

	(1) %	(2) Cost		(3) Weighted Cost	
Debt	45	6	6	2.7	2.7
Equity	55	10.5	11.45	5.8	6.3
Total				8.5%	9.0%

without further Commission action would, the Commission found, be "in keeping with the objectives of the economic policies of the Administration and the rules of the Price Commission to limit price increases on utility services to the absolute minimum and to encourage improved operating efficiency and productivity as an appropriate means of increasing earnings" (Id. at 245-246).

The procedure adopted by the Commission for resolution of the complex questions presented in the investigation of AT&T tariff rates has been explicitly approved by the Supreme Court. See F. P. C. v. Tennessee Gas Transmission Co., 371 U. S. 145 (1962). In F. P. C. v. Natural Gas Pipeline Co., 315 U. S. 575 (1941), the Court noted:

> The establishment of a rate for a regulated industry often involves two steps of different character, one of which may appropriately precede the other. The first is the adjustment of the general revenue level to the demands of a fair return. The second is the adjustment of a rate schedule conforming to that level so as to eliminate discriminations and unfairness from its details. 315 U. S. 575, 584. 14/

In short, we believe it is clear that the Commission proceeded properly and that its Decision in Docket No. 19129 fixed and prescribed the overall rate of return which the Bell system could charge on its interstate

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14/ See also American Lines v. L. & N. R. Co., 392 U. S. 571 (1968) where the Court recognized the usefulness of separate proceedings to consider complex related issues pertaining to costing principles.

services without further proceedings and order of the Commission at a maximum of 9.0%.[15/]

3. The Present Filing

The $717,000,000 rate increase involved in Transmittal No. 12241, is admittedly predicated inter alia upon an increase in the overall rate of return from the 8.5-9.0% range prescribed in the Commission's Decision in Docket No. 19129 to a range of 10.5-11.0%. See Bell Statement 5, Attachment P. This new range for Bell's overall rate of return is in turn composed of an asserted increase in the cost of debt to 7.0% which remains fixed at 45% of Bell's total capitalization, and an alleged increase in the return on equity to between 13.5% and 14.5% (Ibid.).

As Bell's Statement 5, page 10 makes clear, the actual embedded cost of debt as of November, 1974 was 6.8%, somewhat below the figure utilized in its present filing. Even if we accept the 7% debt cost as the embedded cost likely to prevail for the Bell system in the near future, this change alone would not raise the overall return above the 9.0% maximum established in the Decision in Docket No. 19129.[16/] Instead, the proposed

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15/ Moss v. CAB, 430 F.2d 891 (D.C. Cir. 1970); American Telephone and Telegraph Co. v. FCC, 449 F.2d 439 (2d Cir. 1971); compare National Association of Motor Bus Owners v. FCC, 460 F.2d 561, 566-67 (2d Cir. 1972).

16/ Assuming the return on equity remains the same, the overall return at a 7% embedded debt cost would be 8.95%.

18-22% increase in the overall revenue [illegible] in no [illegible] part from the 28.6% increase proposed in Bell's return on equity.

The Bell system Statement 5 contains a lengthy justification for this proposed 13.5-14.5% return on equity. We are not in a position to provide any detailed response at this time. We think it clear, however, that the proposed equity return is far in excess of that provided by most regulatory authorities, federal and state, to utilities with comparable debt-equity ratios. See, e.g., Consolidated Gas Supply Corp., Opinion No. 703, FPC Docket No. RP71-77, issued August 28, 1974 (11.63% return on equity allowed to a gas pipeline with a capitalization including 53.81% equity). We also suggest that the Bell justification for the 13.5-14.5% return on equity closely parallels its showing for a 12.5% return on equity which the Commission rejected in its Decision in Docket No. 19129. Finally, we think the Commission at this preliminary stage of its consideration can give considerable weight to the comments filed by the Council on Wage and Price Stability in its Petition for Suspension and Investigation filed in this proceeding on January 23, 1975. Specifically, we refer to the discussion at pages 7-10 of the Council's petition, in which it details why it does not believe AT&T has presented adequate justification for its proposed increase in rate of return, and urges the Commission to submit such rate of return issues "to a detailed investigation before the tariffs are allowed to become effective" (p. 10, emphasis added).

In the light of all of the foregoing it is submitted that the Commission should reject the present filings. Briefly stated that filing is based on a higher rate of return than prescribed by the Commission and accordingly contravenes Section 205 of the Act.[17/] And, in any event, Bell has not come close to making a showing of financial or operational emergency to justify the Commission's exercise of any claimed discretion to permit the requested rate increase, based on a proscribed rate of return, to go into effect pendente lite. Nor has Bell made any convincing showing as to how such a result could be justified in view of the resulting serious inflationary impact of such an action.

We do not suggest, however, that the Commission is barred from taking such remedial action as it may deem necessary or appropriate in the light of its review of the Bell showings before it. Thus, if the Commission should determine that such showings satisfy the requirements of Section

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17/ Rejection of the present filing is fully consistent with the decision in AT&T v. FCC, 487 F.2d 864 (2d Cir. 1973), which invalidated the imposition by the Commission of a special permission requirement on the filing of further tariff revisions pending its final decision on the rates under investigation. There the Commission claimed that the special permission requirement was supported by "its broad inherent power to regulate communications carriers ..." (487 F.2d at 872). In reversing the Commission, the Court carefully distinguished the situation, such as the one presented by the present filing, where the Commission pursuant to Section 205 of the Act prescribed a rate after full hearing and specific findings. (487 F.2d at 874-8).

it could authorize Bell to file revised rates commencing when the upper range of the 9.0% rate of return prescribed by the Commission.[19] Nor would it be inappropriate if the Commission's examination of the Bell showing leads it to believe it has made a prima facie case for some increase in the overall return to initiate proceedings looking towards an early determination as to whether Bell should be authorized to file new rates based on a return in excess of the presently prescribed 9.0% maximum. But pending such action, the rate filing should be rejected as unauthorized to the extent it is based upon a return in excess of 9.0%, with Bell, at most, authorized to file new rates calculated to eliminate the excess.

B. The Proposed Rate Increases Should Be Rejected Because They Fail To Meet The Reporting Requirements of Section 61.38 of the Commission's Rules

In its final report and order in Docket No. 18703,[20] the Commission adopted a new Section 61.38[21] to its rules, which defines the explanatory

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18/ See Statement of Charles W. King submitted herewith.

19/ This would be consistent with the action previously taken by the Commission authorizing AT&T to file new rates required to produce additional revenues of $145,000,000 consistent with the prescribed rate of return in Docket No. 19129, 38 FCC2d at 250-251.

20/ Amendment of Commission's Rules Relating to Tariffs and Evidence, FCC 70-1096, 25 FCC2d 957 (1970).

21/ 47 C.F.R. Section 61.38.

and support material required to be submitted by carriers filing tariff changes. Paragraphs (a), (b) and (c) of the new section outline the requirements for material to accompany all tariff changes or new tariff filings. Paragraph (d) then spells out more stringent requirements for material to be submitted with certain rate increases, including the present filing:[22/] "the filing carrier shall submit all cost, marketing, and other data on which it relies in justification of the rate increase and in an appropriate form to serve as the carrier's direct case in the event the rate increase is set for hearing . . .".

The content of material which must be offered in evidence in common carrier hearing proceedings is in turn spelled out in Section 1.363(b)[23/] of the Commission rules: "there shall be a clear statement of the facts and judgments upon which conclusions are based and a statement of the relative weights given to the various factors in arriving at each conclusion, together with an indication of the alternative courses of action considered." The Commission has specifically provided that failure to

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22/ Section 61.38(d)(2) defines the rate increases to which this Section applies: "a rate increase in any service or tariffed item resulting in more than $1 million in additional annual revenues, as calculated on the basis of existing quantities of service, without regard to the percentage increase in such revenues." Since AT&T's rate proposals will yield annual revenue increases of $717,000,000, this provision clearly applies to the instant filing.

23/ 47 C.F.R. Section 1.363.

comply with any provision of Section 61 will be grounds for rejecting the tariff material filed by the carrier. 24/

As set forth in the Statement of Charles W. King submitted as an Attachment hereto the Cost Data submitted by AT&T does not meet or satisfy the provisions of the Commission's rules which specify the requirements for material to accompany the present filing seeking increases in the amount of $717 million. More particularly, as detailed in the aforesaid Attachment, analysis of the tariff filing discloses the following fatal deficiencies:

A. Bell has not submitted a projection of costs for a three-year period beginning at the date of the filing of the tariff matter.

B. Bell has not submitted "estimates of the effects of the changed or new matter upon the carrier's traffic and revenues from the service to which the changed or new matter applies."

In light of the foregoing, it is submitted that the Commission should reject the proposed rate increases for the reasons that (1) they are predicated on a higher rate of return than prescribed by the Commission, and (2) they fail to meet the reporting requirements of Section 61.38 of the Commission's rules.

24/ 47 C.F.R. Section 61.69.

IV. If The Proposed Rates Are Not Rejected They Should Be Set For Hearing And Suspended For The Maximum Period of the Communications Act

The deficiencies in the AT&T showing listed above would in themselves justify the filing's suspension for the full statutory period in the unlikely event the Commission holds they do not constitute grounds for its outright rejection. This is particularly true when it is recognized that the three prior increases have been suspended for the maximum period without a determination of their validity. Moreover, there are additional reasons which, in any event, require the suspension of the present filing.

These additional infirmities are fully detailed in the attached Statement of Mr. King and in brief summary are as follows:

A. Bell's forecasts of MTS message volumes are based on outdated economic data.

B. Bell's forecasts of the market for private line services are based on obsolete economic data.

C. Bell's cost studies submitted as support for its projections under Section 61.38 are invalid.

V. Any Order Suspending The Rates Should Contain A Provision For Accounting And Refund With Interest Of At Least 9%

Section 204 of the Communications Act provides that the Commission may, following suspension of the rates for the 90 day statutory period,

require that the carrier keep accurate accounts of all amounts received so that upon completion of the hearing refunds, "with interest" may be made to the ratepayers.

The Commission's practice with regard to refunds is not consistent with other regulatory agencies operating under comparable statutory schemes. Thus, the Federal Power Commission has adopted rules which provide for a set interest rate and has recently amended those rules to provide for an interest rate of 9%, Order No. 513, October 10, 1974. Similarly, the New York State Public Service Commission has proposed to increase its interest rate on refunds to ratepayers to 10%. We submit that a comparable rate of interest should be imposed by the Commission and applied in this case.

VI. Conclusion

In the tariff filing under review, AT&T is seeking enormous increases in rates which are unprecedented in amount and number of services affected. Such increases will have a severe inflationary impact on the economy in general and will seriously and adversely affect all consumers. In its Comments, the Council on Wage and Price Stability expressed its serious concern that such increases "... might result in substantial dislocations in various areas of the economy" (p. 12). For the reasons set forth herein, it is submitted that the tariff should be rejected. In the event that the Commission is not prepared to do so on

the basis of the pleadings, it is respectfully requested that oral argument be scheduled at the earliest data.

Wherefore, Aerospace Industries Association of America, Inc., on behalf of its members, respectfully prays that the Commission promptly reject or suspend, as hereinabove requested, the effectiveness of the rate increases filed by AT&T Transmittal No. 12241, and that the Commission grant such further relief as may be just and proper.

Respectfully submitted,

AEROSPACE INDUSTRIES ASSOCIATION
OF AMERICA, INC.

By S/ Arthur Scheiner
Arthur Scheiner

S/ Richard A. Solomon
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January 28, 1975

I. The rate increases which Bell proposes are in fact greater than the support material filed by Bell would indicate.

In his cover letter to Chairman Wiley of the FCC, James R. Billingsley, Vice President of AT&T, stated that the rate adjustments requested by Bell are "designed to produce a 7.2 percent net increase in Bell's interstate revenues."[1] Attachment A to Bell Statement 2 shows that Bell anticipates total revenues of $9,097 million at present rates in 1975. Attachment K of Bell Statement 6 shows that the rate proposals will generate a net revenue increase of $717 million. The percentage relationship of these two numbers is not 7.2 percent, as Mr. Billingsley states, but 7.9 percent.

Furthermore, the 7.9 percent is not a measure of the composite increase in rates. It represents the difference between two levels of revenue derived from disequal volumes of traffic. Bell forecasts that the rate increase will cause a contraction of 195 million message toll messages and 1,512 WATS lines in 1975.[2] Thus, the 1975 traffic base with the rate increases in effect is smaller than the 1975 traffic base under present rates. The requested rates applied to the same traffic base would therefore generate a revenue increase greater than 7.9 percent.

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[1] Letter from James R. Billingsley to Richard E. Wiley, January 3, 1975, page 1; also, Bell Statement 1, page 6.

[2] Traffic and Revenue Data, Volume 1, page 6.

II. Bell has failed to meet the reporting requirements of Section 61.38 of the Commission's rules.

In its final report and order in Docket No. 18703,[1] the Commission adopted a new section 61.38[2] to its rules, which defines the support material required to be submitted by carriers filing tariff changes. Paragraph (a) identifies the explanatory material and data which must be submitted in support of a changed and/or new tariff offering.[3]

> "(i) For changed matter, a cost of service study for all elements of costs for the most recent 12-month period; and for changed and new matter a study containing a projection of costs for a 3-year period beginning at the date of the filing of the tariff matter; and
> (ii) Estimates of the effects of the changed or new matter upon the carrier's traffic and revenues from the service to which the changed or new matter applies; upon the traffic and revenues from the other service classifications of the carrier; and upon the overall traffic and revenues of the carrier. Estimates should include the estimated effects on the traffic and revenue data for the most recent 12-month period and projections for a 3-year period beginning at the date of the filing of the changed or new matter. Complete explanations of the bases for the estimates should be provided."

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[1] Amendment of the Commission's Rules Relating to Tariffs and Evidence, FCC 70-1096, 25 FCC 2d 957 (1970).

[2] 47 C.F.R. Sec 61.38.

[3] Id., paragraph (a).

A. Bell has not submitted "a projection of costs for a three-year period beginning at the date of the filing of the tariff matter."

Volume 1 of the Cost Data submitted by AT&T contains what the company purports to be its response to subparagraph (i) above. Section 5 of that volume displays Bell's revenues, expenses and investments for the 12-month period ended August 31, 1974. These data are separated into eight service categories according to four different cost allocation methodologies. This section purports to fulfill the Commission's requirement for "a cost of service study for all elements of costs for the most recent 12-month period."

Sections 2, 3 and 4 show cost differentials during 1975, 1976 and 1977, respectively, reflecting the differences in quantities of service anticipated at present rates and at the proposed rates. None of these sections contain any estimate of the costs of the changed matter, which would include seven out of the eight service categories shown in Section 5. All of these differentials are negative quantities, suggesting that costs at the proposed rates will be lower than costs at the present rates. Yet nowhere in that volume, nor in the supporting "Cost Data" volumes, are there any explicit displays of the base total costs during 1976 or 1977 either before or after the application of the differentials.

In only one place in the entire filing is there a presentation of future total costs, and that is not even in the material which purports to respond to Section 61.38. The attachments to Bell Statement 2, "Bell System Interstate Operating Results" contain a "1975 View" of the System's total interstate costs under Bell's accounting plan and under the accounting plan used by the Commission in FCC Docket No. 16258. These "views," however, represent costs only at existing rates, not at the requested rates, nor do they reflect the 1974 labor agreement.[1] Although it is possible to construct a 1975 "view" according to AT&T's accounting plan by applying the differential revenue and cost quantities in Attachment K of Bell Statement 6 to the data in Attachment A of Bell Statement 2, Bell has not provided any display of the full cost and revenue condition of its interstate operations after the rate increases have been put into effect. As a consequence, there is nowhere in the filing an explicit computation of the 10 3/4 percent rate of return projected by Bell for 1975.[2]

Even less information is available for the forecast years 1976 and 1977. Sections 3 and 4 of Cost Data Volume 1 present the differences in expenses and investment between their estimated levels in 1976 and 1977, respectively, under existing rates and under new

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[1] Bell Statement 1, page 5.

[2] Bell Statement 2, page 16.

rates. They contain no estimates of the absolute levels of cost in those years, nor are such estimates displayed in any of the other "Cost Data" volumes supporting the summary Volume 1. Apparently, Bell interprets the word "costs" in Section 61.38(a)(i) as meaning absolute levels of cost in the retrospective context, that is, for the most recent 12-month period, but as differential costs in the prospective context, that is, for the three-year projection. The section itself offers no indication that Bell's interpretation is correct. There is not even the suggestion that the meaning of "costs" should be radically different prospectively as compared with retrospectively.

The impropriety of Bell's interpretation of the section's requirements is made obvious by a test of meaningfulness. The cost differentials which Bell has provided are totally meaningless in the absence of any estimates of the corresponding base costs to which they can be related. The Commission cannot possibly know the significance of a contraction in annual costs of $279 million[1] in 1977 without some impression of the absolute level of costs in that year. Nor does a projected contraction of $1,091 million in net investment[2] convey any meaning without any impression of the investment base to which it should

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[1] Cost Data Volume 1, page 013.

[2] Ibid.

be applied. Such base estimates are simply absent from Bell's presentation.

Even assuming, arguendo, that measures of cost differentials created by the rate change were indeed an appropriate response to the forecasting requirements of Section 61.38(a)(i), the data presented by Bell apparently do not in fact measure that effect. According to Bell Statement 1, the estimate of Bell's 1975 interstate revenue, expenses and return on investment at present rates which is contained in the attachments to Bell Statement 2 "does not reflect the full year's impact of increased labor costs which will rise again in mid-1975 pursuant to the recent labor settlement."[1] Cost Data Volume 1, however, states that the projected cost results for 1975, 1976, and 1977 "reflect the estimated effect of the 1974 Bell System labor agreements."[2]

Bell does not explain how the 1974 labor agreements are reflected in the 1975-1977 cost data. As indicated, those data are negative differentials which measure the contraction in cost resulting from the price-elastic responses in demand to the proposed rate increases. If the labor agreement effects are reflected in these differentials, as Bell's description would suggest, then the "pure"

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[1] Bell Statement 1, pages 5-6.

[2] Cost Data Volume 1, page 004.

cost effect of the price-elastic response is much greater than Bell shows. Specifically, Bell shows that the repression in demand caused by the rate increase would reduce expenses by $192 million and investment by $880 million in 1975. If these estimates are the net effect after deducting the offsetting increase in cost from the 1974 labor agreement, then the actual contraction in cost specifically resulting from reduced consumer demand must be somewhat greater. Thus, even if the forecasting requirements of Section 61.38(a)(i) are as Bell interprets them, the data presented by Bell do not conform to that interpretation, but include the effects of a wholly extraneous consideration, the labor agreements of 1974.

B. Bell has not submitted "estimates of the effects of the changed or new matter upon the carrier's traffic and revenues from the service to which the changed or new matter applies."

Among the effects of Bell's rate proposal will be a contraction in demand owing to the price-elastic responses of the market to the higher prices contained in the new tariffs. Unaccountably, Bell has attempted to measure these price-elastic responses for only two of the eight major service categories affected by this rate increase, message telephone service (MTS) and WATS. Yet these two services can reasonably be expected to show the least price elasticity because, unlike Bell's private line offerings, they are sold in almost purely monopoly markets.

As for the private line services, Bell has apparently assumed that its 7.8 percent rate increase[1] would cause no market reaction whatever. Tables 18 to 46 of Traffic and Revenues Volume 1 reveal that except for Series 2000/3000 telephone service, the market quantities of each of the private line offerings would remain unchanged between present rates and new rates. Even for Series 2000/3000 the only changes in market quantities between the present and new rates were those produced by MTS/WATS/Private Line interservice cross-elasticities.

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[1] Bell Statement G, page 26.

There was no reflection of repressed demand owing to market price elasticities.[1]

In prior filings, Bell has explicitly acknowledged that such price elasticities do indeed exist in the markets for the various private line services. In a market study of private line services made in connection with FCC Docket No. 18128, Bell classified market reactions in three categories, (1) shifts to or from other Bell services, (2) shifts to or from competitive services, and (3) repressed or stimulated demand.[2] In the instant filing Bell has measured only the first of these three categories and this only with respect to shifts between MTS, WATS and Series 2000/3000. Yet in its Docket No. 18128 studies, Bell analyzed a test rate schedule (No. 5) which assumed a 15 percent increase in the rates for Series 1000, 2000, 3000, and 4000 private line services. That study indicated that an increase of this magnitude in private line telegraph (Series 1000) rates would reduce the airline miles leased in that service by three percent.[3] Similarly, a 15 percent increase in private line telephone and telephoto rates (Series 2000, 3000, 4000) would contract demand by 3.6 percent.[4]

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[1] Traffic and Revenue Data, Volume 5, page 005.

[2] FCC Docket No. 18128, Appendix to Bell Exhibit 1, Section 5.

[3] FCC Docket No. 18128, Appendix to Bell Exhibit 1, page 4-1.

[4] Ibid.

While it is reasonable to suppose that a rate increase of 7.8 percent would generate a somewhat smaller contraction in demand, it is unreasonable to assume, as Bell has done, that there would be no contraction whatever.

Also, as part of the same market study, Bell analyzed a series of four alternative rate schedules for the TELPAK service (Series 5000). One of these test schedules (No. 3) involved an aggregate weighted rate increase of 28 percent.[1] Bell's study indicated that this rate increase would cause approximately 9.7 percent[2] of the TELPAK telephone channel miles either to divert to competitive forms of communication or to disappear altogether due to repressed demand. In fact, the record of FCC Docket No. 18128 suggests that these estimates of elasticity are almost certainly understated.[3] Nevertheless, even as estimated by Bell, they demonstrate the presence of substantial price elasticities for the TELPAK service. Bell has offered no justification for ignoring these effects of the rate increase.

The consequences of these omissions cannot be predicted without knowing the specific revenue/cost relationship of the market quantities lost owing to the repressed or diverted private line demand.

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[1] Id. pages 1.1 and 6.1.

[2] Id. pages 4.1 and 5.1.

[3] FCC Docket No. 18128, Proposed Findings of the Airline Industry Parties, pages 83 to 125.

If the lost revenue exceeds the costs saved, then the rate of return earned will be less than that forecast by Bell. Conversely, if the cost reduction exceeds the revenue loss, then Bell's rate of return will be greater than that forecast. One thing is reasonably certain: except in the highly unlikely situation that the revenue loss and the cost (including return) savings resulting from these private line elasticity effects exactly balance, Bell will not realize a rate of return of 10.75 percent on its 1975 investment under the proposed rate schedules as it has forecast.

III. Accepting, arguendo, the relevance of Bell's projections for purposes of Section 61.38 of the Commission's rules, the market studies which underlie them are invalid.

A. Bell's forecasts of MTS message volumes are based on outdated economic data.

Bell based its projections of MTS message volumes on forecasts of economic variables for 1975, 1976 and 1977. Specifically, forecasts of business message volumes were based upon projections of disposable personal income, the Consumer Price Index and the AT&T Index of Industrial Activity.[1] Forecasts of residence message volumes were based on projections of disposable personal income and the Consumer Price Index.[2]

These projections were made by AT&T as of September 20, 1974.[3] Bell has displayed each index for October of each year from 1973 through 1977.[4] Already the October 1974 FRB Index has been revised downward. On January 15, 1975, the Federal Reserve Board issued a revised value of 124.8, a substantial drop from the preliminary figure of 125.5 which Bell employed in its forecasts.

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[1] Traffic and Revenue Data Volume 3, page 31. (The AT&T index, which is no longer published, is based in turn on the Federal Reserve Board's Index of Industrial Production.)

[2] Ibid.

[3] Id., page 32, Footnote.

[4] Ibid.

Data now available for November and December of 1974 indicate a continued decline in economic conditions, not an upturn as Bell's October 1975 estimates would imply. On January 15, 1975, the Federal Reserve Board issued a November Index of 121.7 and a December Index of 118.3. The Bureau of Labor Statistics of the U.S. Department of Labor has indicated December disposable personal income at an annual rate of $1,009.7, a decline from the $1,010.7 October 1974 value reported by Bell.

Recent economic forecasts indicate a continued downward trend. The table below contrasts the forecasts in Bell's filing with estimates released by Data Resources, Incorporated and by the Wharton Economic Forecasting Unit, Incorporated.

Disposable Personal Income

	1974	1975	1976
Bell Filing (October)	1010.7	1111.4	1227.0
Data Resources, Inc. (year)	979.1	1060.3	1184.9
Wharton Economic Unit, Inc. (year)	980.6	1069.6	1171.3

FRB Index of Industrial Production

	1974	1975	1976
Bell Filing (October)	125.5	129.0	134.7
Data Resources, Inc. (year)	124.4	118.8	126.5

The recent Data Resources projections indicate little likelihood of an upturn until at least 1976.

In Bell's own filing, J. J. O'Leary contradicted the economic forecasts Bell used for MTS message volumes. At page 22 of his statement, Mr. O'Leary commented:

> "My own view is that the recovery of business will be gradual in the latter part of 1975 and that economic growth in 1976 will continue to be less than vigorous, with real GNP expanding something like 2-3 percent in 1976."

In spite of this forecast, Bell has assumed a 2.8 percent increase in the FRB Index of Industrial Production between October 1974 and October 1975 and an additional 4.4 percent increase in this Index to October 1976. Using the latest FRB reported Index for December 1974, a jump of 13.9 percent from 118.3 to 134.7 would be required in a 20-month period in order for Bell's forecasts for October 1976 to be realized. Mr. O'Leary does not appear this optimistic.

In spite of these economic downturns, Bell's projections in this filing reflect a very substantial secular increase in MTS message volumes. According to Bell's operating data, the number of messages increased from 3.573 billion in 1973 to 3.854 billion in 1974, a growth of 7.9 percent.[1] At present rates, Bell forecasts

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[1] Bell Statement 2, Attachment A, page 1.

4.260 billion messages in 1975,[1] a growth of an additional 10.5 percent. Furthermore, Bell indicates that at current rates it will handle 5.74 billion messages in 1977,[2] a growth of an additional 35 percent over the two-year period.

Bell has conceded that its forecasts for 1975 may reflect too optimistic a view of the growth of the economy.[3] The implication is that a lower rate of growth will result in a lower level of earnings for the Bell System. However, the Bell documentation provides no evidence that a slower rate of growth would necessarily worsen the company's earnings posture.

Quite the contrary, Bell bases much of its argument for additional revenue need upon the necessity to raise external capital of about $4 billion annually to support the current level of construction expenditures.[4] Indeed, much of Bell's opening statement is devoted to dire warnings of the serious consequences which would result from reductions in the Bell System's construction program. Attachment B

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[1] Ibid.

[2] Traffic and Revenue Data Volume 3, Table 43.

[3] Bell Statement 1, page 5.

[4] Id., page 4.

to Bell Statement 1 reveals that well over 60 percent of Bell's capital program is related to growth. Clearly, the growth of the economy and the requirement to construct new facilities are closely related, so that Bell's needs for construction should decline if, as it appears, the nation's economy declines.

In fact, this reduction in Bell's construction requirements has become manifest within the last week by a reported reduction in the Bell System construction program for 1975 from a previously announced 10.5 billion to the range of 9.9 billion, a lowering of new money requirements of approximately $600,000,000.[1] Since Bell bases much of its justification for an increased rate of return on the burden of raising new capital, the unanticipated slowing of the economy may paradoxically redound to Bell's benefit and reduce rather than increase its need for revenue.

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[1] Telecommunications Reports, January 20, 1975, page 3.

B. Bell's forecasts of the market for private line services are based on obsolete economic data.

Most of Bell's market estimates for its private line services are derived from its filings in FCC Docket No. 19919 which were transmitted to the Commission on February 14, 1974.[1] Thus, its private line market estimates are in virtually all cases based on information at least a year old. Furthermore, a great portion of the economic projection data which Bell used in Docket No. 19919 reflected conditions no more recent than April of 1971.

Bell states that for voice grade private lines "traffic and revenue used as the starting point were taken from the study underlying Bell's revised Series 2000/3000 filing (FCC Docket No. 19919)."[2] Bell's market estimates for 1973, 1974 and 1975 at present rates were taken directly from the Docket No. 19919 study workpapers. Data for 1976 were also obtained from the Docket No. 19919 study workpapers with an adjustment for distances less than 26 miles to reflect recent changes in the interstate short haul rate schedule. Market projections for 1977 were obtained by simple linear extrapolation of the 1973 through 1976 data developed as described above.

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[1] Traffic and Revenue Data, Volume 5, Tab 1.

[2] Ibid.

To estimate the market effect of the proposed Series 2000/3000 rate changes, the only modification which Bell made was to provide for cross-elasticities between some of its private line services, MTS and WATS.[1] Changes in market quantities for each year as determined by the cross-elasticity analysis were algebraically added to the market projections for existing rates used in FCC Docket No. 19919. As indicated above, Bell made no adjustments to reflect overall elasticities (as opposed to cross-elasticities) of its private line services. Nor has Bell made any adjustments to reflect secular market changes since the time of its Docket No. 19919 filing.

Bell states that for most of its other private line services source data were derived in a manner identical to that employed for Series 2000/3000 except that for these other services cross elasticities were not involved.[2] By "not involved," Bell means that these cross elasticities, which it has recognized elsewhere,[3] were simply neglected. For example, Bell developed its market estimates for Series 1000, which includes its subvoice-grade offerings, and Series 5000, its TELPAK offering, directly from its FCC Docket No 19919 data with no modification to reflect shifts to or from these private line services and other private line services, MTS or WATS. For Series 6000, the traffic and revenue used as a starting point were taken from the 1973

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[1] Ibid.

[2] Ibid.

[3] See Section II of these comments.

private line inventory. These market quantities were adjusted upward to year-end 1974 by applying a one percent annual growth factor, for which Bell provides no justification. Furthermore, Bell's description indicates that the same one percent growth factor was employed to extrapolate 1974 data to 1975, 1976 and 1977, with no rationale provided for this approach.

The Docket No. 19919 data which serve as a source of market projections are in turn based on yet older information. Bell stated, "To project the Series 2000 and 3000 market quantities for the nine-month period ending December 1971 and for calendar years 1973 to 1976 it was necessary to develop growth factors which, when applied to the Series 2000 and 3000 NTC quantities in the Bell System interstate private line inventory of April 1971, would result in new projected quantities for each of these periods."[1] Thus, Bell's private line market quantities in this filing trace back to its April 1971 inventory.

In fact, the trend data is older still. To develop growth factors, Bell considered the state of the national economy in the period October 1967 through April 1971. Bell analyzed two segments of this period: October 1967 through February 1969; and April 1970 through April 1971. An annual growth factor was computed as the simple average

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[1]FCC Docket No. 19919, Bell Exhibit 4, Tab 3.

of the growth rates for these two periods. The same Bell Exhibit 4 of Docket No. 19919 indicates a similar approach for most, if not all, of Bell's other private line offerings. For example, its projections for the period 1973 to 1976 for Series 1000 were also based on a comparison of inventories of certain items in Series 1000 in October 1967, February 1969, April 1970 and April 1971. Inventories for the same times were used to project TELPAK growth in the period through 1976.

IV. Accepting, arguendo, the relevance of Bell's projections for purposes of Section 61.38 of the Commission's rules, the cost studies which underlie them are invalid.

Section 1 of Cost Data Volume 1 describes the Bell System cost forecasts for the years 1975, 1976 and 1977 "as incremental cost calculations...based on the difference in quantities of service between estimated levels for each of the three years under existing rates and under new rates."[1]

In interpreting this approach, Bell has translated these differential market quantities into new facility and equipment requirements. These requirements in turn have been multiplied by estimates of the unit costs of new additions of the respective facility and equipment items during the three years of the forecast period. The cost of high capacity, high frequency line transmission, for example, reflects a projection of the average cost of additions of such facilities during the period 1973-1977. Other facilities and equipment costs are based either on the cost of current additions or on cost projections of near term future additions. In no case has Bell employed the embedded cost of facilities added to the system prior to about 1973.

Such a costing approach might be fully appropriate if Bell were analyzing only new additions to its services, as for example, the cost of a new competitive service or of a serivce which only marginally affects the rate of growth of the overall system. In the present case,

however, Bell is attempting to measure the cost effect not of additions, but major contractions in service, not of peripheral competitive services, but of virtually the entire range of services[1] which the System provides. Specifically, Bell is attempting to measure a contraction of about 200 million MTS messages and 1700 WATS lines.[1] It should also be attempting to measure proportionate—if not greater—contractions in its private line offerings, but as discussed above, it has inexplicably ignored all price elasticities for these services.

The incremental cost effects of major contractions in service may take three forms. First, if there is a strong secular, i.e., independent growth trend, the contraction in demand resulting from a rate increase may merely slow that rate of growth from that which would have been experienced had the rate increase never been imposed. Second, there may be an acceleration of the retirement schedule of old, usually obsolescent equipment. Third, there may be abandonment of some equipment which is dedicated, by reason of either location or special design, to customers who will repress or divert demand in order to escape the rate increase.

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[1]The principal exception in video (Series 7000) which accounts for about one percent of Bell's net investment on a Method 7 allocation basis.

[2]Traffic and Revenue Data, Volume 1, page 6.

Bell has chosen to reflect only the first of these three effects in its cost study. The propriety of this treatment depends upon the presence and strength of a strong secular growth trend. Although Bell's estimates of service volumes during the forecast period suggest a rate of independent growth of approximately 15 percent annually between 1975 and 1977, the discussion above has revealed that the economic indicators used to project this rate of growth are overly optimistic in light of recent economic developments.

Bell has totally ignored the other two effects, that of accelerating the retirement of obsolescent facilities and forcing the abandonment of dedicated plant and equipment. Of these two effects, the latter would apply primarily to the private line services, for which Bell has unreasonably assumed no price-elastic contraction in demand. Prior Bell studies have indicated that about 60 percent of private line telegraph costs, five percent of private line telephone costs, and 16 percent of TELPAK costs relate to non-fungible plant, that is, discrete facilities which could not be reassigned to other services if the current demand for them by their present users were to disappear.[1] Since abandonment of such facilities would, in effect, involve a capital write-off, the absence of any reflection of this cost effect may constitute a major understatement of the cost to Bell of imposing these rate increases.

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[1] FCC Docket No. 18128, Bell Exhibit 22B, pages 012, 022, 031 and 040.

More significant, however, would be the error which could result if the contractions in demand created by Bell's rate increases triggered a major acceleration of the retirement of obsolescent facilities. The record of FCC Docket No. 18128 suggests that this error could have a significant influence on the rate of return which Bell will experience during the forecast period. Data provided by Bell in that proceeding revealed that the book cost of obsolescent line haul transmission plant was then (1969) greater than the cost of the new replacement facilities, even on a net investment basis.

1969 Bell System Investment Costs[1]

		Per Circuit Mile		Per Carrier Terminal	
		Gross	Net	Gross	Net
Short and Intermediate-Haul					
Obsolescent:	Open Wire	$150.77	$ 78.55	$4,500.00	$1,913.00
	Voice Frequency Cable	200.36	135.33	--	--
Replacement:	N Carrier	38.15	28.76	1,250.00	950.00
Line-Haul					
Obsolescent:	K Carrier	36.55	15.93	1,400,00	595.00
Replacement:	Coaxial Cable	17.74	14.70	1,050.00	842.00
	Radio Relay	10.75	8.32	1,025.00	822.00

[1] Airlines Rebuttal Exhibit 1, page 5.

To the extent that Bell has substituted the cost of new facilities as a measure of incremental effect of price-elastic service contractions when instead the effect would be to hasten the retirement of high cost, obsolescent facilities, it has understated the cost savings resulting from its rate proposals. As a consequence, it has overstated its rate of return during the forecast period. Because of these retirements, the actual rate of return may exceed the 10.75 forecast for 1975.

Charles W. King
Snavely, King & Tucker, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT	)	Transmittal No. 12241, Filed January 3, 1975
Revisions of Tariff F.C.C. Nos. 259, 260, 263, Increased Charges for Long Distance Message Telecommunications Service (MTS), Wide Area Telecommunications Service (WATS), and Private Line Service	)	

To: The Commission En Banc

PETITION TO REJECT, REQUIRE WITHDRAWAL, OR FOR SUSPENSION, INVESTIGATION, AND HEARING ON PROPOSED TELPAK RATE INCREASES

Comes now the Air Transport Association of America (ATA), a party in Docket Nos. 18128, 19129, 19919, and 20097, by its attorneys, pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 203, 204, 205, and 403 of the Communications Act of 1934, as amended, and Sections 1.1, 1.363, 1.773, and 61.38 of the Commission's Rules and Regulations, and the inherent powers, duties, and responsibilities of the Commission in implementation of and ancillary to the effective performance of its statutory authority, [1/] and respectfully petitions that the Commission grant the following relief, in the alternative, with respect to certain increases in rates for private line services of the American Telephone and Telegraph Company, Long Lines Department, Tariff F.C.C. No. 260, described in its Transmittal No. 12241, dated January 3, 1975, for effectiveness March 4, 1975:

1/ See United States v. Southwestern Cable Co., 392 U.S. 157 (1968), and Associated Press v. FCC, 145 U.S.App.D.C. 172, 448 F.2d 1095 (1971).

a. That the Commission reject said tariff increases, or request or require their withdrawal or postponement, voluntary or mandatory, as untimely, invalid, and void; or

b. That the Commission suspend the operation of such revised increased charges as inadequately justified, unjust, unreasonable, unduly and unreasonably discriminatory, unlawful, and contrary to the public interest, for the full statutory period provided by law; institute an investigation and enter upon a hearing concerning the lawfulness thereof; and, if the hearing not be concluded within the period of suspension, require that the carrier keep accurate account of such amounts as may be received by reason of such increases; or

c. That the Commission grant such other and further relief as may to the Commission seem just and proper in the premises.

In support thereof, petition ATA respectfully states as follows:

I. Preliminary Statement

1. By Transmittal No. 12241 dated January 3, 1975, AT&T has filed revisions in its tariffs for various classes of service which impose rate increases upon private line services designed to achieve, according to AT&T, roughly proportionate increases in the revenues from private line services (7.4%) and from MTS (7.2%) and WATS (7.3%), notwithstanding that the private line services are competitive and the MTS [1a/]

[1a/] Bell Statement 6, Attachment A, page 1.

and WATS services are monopoly services so that increases in private line rates are more likely to reduce rather than increase the contribution of private line service to the carriers overall revenue requirements; notwithstanding that rate decreases as well as rate increases have traditionally been applied to MTS and WATS in order to achieve a particular rate of return because they constitute some 87 percent of the Bell System revenues, so that over the past ten years, while the Bell System has reduced its MTS and WATS rates, overall, so as to have reduced the aggregate of its interstate revenues by some $500 million, private line rates during the same ten years have increased to produce revenue increases aggregating some $200 million; and, above all, notwithstanding that the present filing seeks to impose a fourth rate increase upon TELPAK in 5-1/2 years, although the Commission has yet to conclude the series of hearings to determine not only the propriety of any of the three prior increases, but also whether the original Telpak C and D rates, found justified by competitive necessity were compensatory.

2. This petition is addressed primarily to the impropriety of this further "pancaking" of private line rate increases, and especially those for TELPAK.

II. Standing of Petitioner

3. The Air Transport Association of America is an unincorporated non-profit association comprised of common carrier members constituting virtually all of the United States flag lines authorized and required under certificates of the Civil Aeronautics Board to provide regularly scheduled air transportation over established routes. As a principal objective, ATA is engaged in the promotion and development of air transportation to meet the present and future needs of foreign and domestic commerce of the United States, the postal service, and the national defense.

4. The airline industry, a regulated industry licensed to operate in the public interest, is a major dynamic force in the American economy. Essential to the safe and efficient conduct of its business and operations and its continuing growth is the availability of "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges". 2/ The airline industry is the largest private user of TELPAK service, and is second only to the United States Government among all users. The communications made possible by TELPAK are used in many ways by the airlines to promote safety and to improve services to the public.

2/ Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. §151.

5. ATA vigorously participated in the original TELPAK Case, Docket No. 14251, in the later stages before the Commission and on appeal; it was an early intervenor and an active participant in Phase I-B of the AT&T General Rate Investigation, Docket No. 16258, and in the TELPAK Sharing Case, Docket No. 17457, before the Commission and on appeal; it has been an early intervenor and active participant in the TELPAK-Private Line Case, Docket No. 18128, now awaiting a Recommended Decision by the Chief of the Common Carrier Bureau; and it has been an intervenor and participant in AT&T Charges, Regulations, Classifications and Practices for Voice Grade Private Line Service (High Density-Low Density Rate Structure), Docket No. 19919, now awaiting Commission decision, and intervenor and a more limited participant in AT&T Charges for Interstate Telephone Service, Docket No. 19129, now in hearing on Phase II of the proceeding, and an intervenor and active participant in American Trucking Associations v. AT&T, Docket No. 19746, and its successor "paper" proceeding, Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, Docket No. 20097, presently in an intermediate stage of Comments.

6. The airline industry represented by ATA, which is the largest TELPAK user in the private sector, second only to the United States Government among all users, would be most severely aggrieved and adversely affected by still another fourth round rate increase during the extended period of unresolved litigation, when Telpak rates have more than doubled during the interim. Aeronautical Radio, Inc. (ARINC), the communications company of the air transport industry, is AT&T's customer for the

industry's private line services. ARINC data disclose that the three rate increases already at issue in Docket 18123, combined with the proposed further increases, represent a 114% overall increase in charges for Telpak and related private line services provided to the industry. The following table gives the cost of ARINC's March 1971 private line services, repriced at the various rate levels:

	Original Tariff	Interim Increases 9/1/68	Further Increases 2/1/70	Further Increases 5/4/72	Proposed Further Increases
ARINC Private Line Charges	29.7M*	41.7M*	57.0M*	59.6M*	63.5M**
Amount of Increases Over Previous Rates		12.0M	15.3M	2.6M	3.9M
Percent of Increases Over Previous Rates		40%	37%	4.6%	6.6%
Total Amount of Increase		12.0M	27.3M	29.9M	33.8M
Total Percent of Increase		40%	92%	101%	114%

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* See ARINC Exhibit 10, p. 2 (Docket No. 18128).
** Calculated by increasing 5/4/72 interstate charges by 7.8%.

III. The Commission Has Never Determined Whether Any Of The Three Previous TELPAK Rate Increases Were Proper, Or Even That The Original TELPAK C and D Rates Were Non-Compensatory

8. The issue of the proper rate level of TELPAK began with the investigation in 1961 in Docket No. 14251 into the lawfulness of TELPAK as a new bulk communications offering by AT&T. 3/ In the tentative decision in 1964 in the TELPAK case, the Commission left open the question for further hearing whether the original rates were compensatory: 4/

> There is apparent justification for TELPAK C and D classifications in terms of meeting competition from private microwave systems having channel capacities comparable to those offered by such TELPAK classifications. However, we are unable to determine on this record that the rates for TELPAK C and D classifications are compensatory in relation to the cost of furnishing the services offered thereunder, and, therefore, are unable to find that the other users of A.T.& T. services will benefit and not be burdened by the applications of such rates. (Emphasis added).

9. In the final TELPAK decision, 5/ the Commission expressly adopted these findings and conclusions "that although C and D TELPAK would otherwise be justified by competitive necessity, they have not been shown to be compensatory," and stated that from the cost studies being conducted by AT&T of its various services "it should be possible to develop from these cost studies more positive data relating to the cost of furnishing TELPAK C and D." The record was ordered reopened for this limited purpose, and AT&T was directed to "submit for the record in this proceeding additional cost data on the basis of which the Commission may determine whether or

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3/ FCC 61-1039 (1961).
4/ 38 F.C.C. 370, 395 (1964).
5/ 37 F.C.C. 1111, 1117-18 (1964).

not the existing rates for TELPAK C and D are compensatory, together with such revised tariff schedules as may be indicated by such data * * *" (Emphasis added).

10. The narrow scope of the issue remaining as to TELPAK C and D was recognized by the United States Court of Appeals for the District of Columbia Circuit: 6/

> Upon consideration the Commission concluded that the Telpak C and D rates were justified by competition, and this conclusion necessitated a determination as to whether these rates were compensatory, that is, whether they would bear their own costs or would be a burden on other customers of the Company. * * * Upon completion of these inquiries the Commission was unable to determine whether the C and D rates would sustain the burden of their own costs and thus supply a justification of the difference between those rates and the rates charged other customers. * * * (Emphasis added).

11. On remand from the appeal, the Commission by Memorandum Opinion and Order 7/ ordered the TELPAK proceeding terminated upon the filing of revised tariff schedules disposing of TELPAK A and B's unlawful discrimination, incorporated the TELPAK record into Docket No. 16258, and amended the issues in Docket No. 16258 to include a determination whether the same original charges for TELPAK C and TELPAK D are just and reasonable. On petition for partial reconsideration and modification, various intervenors, including the airline group, averred that the remaining issue with respect to TELPAK C and D should be reversed for determination in the existing Docket No. 14251. Rejecting this argument, the Commission twice

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6/ American Trucking Associations, Inc. v. FCC, 126 U.S.App.D.C. 236, 242, 377 F.2d 121, 129 (1966), certiorari denied 386 U.S. 943 (1967).

7/ 7 F.C.C.2d 30 (1966).

emphasized in a Memorandum Opinion and Order on reconsideration [8] that the only issue with respect to TELPAK C and D was whether existing rates are compensatory:

> The Commission, in amending its Order of October 27, 1965, in Docket No. 16258 (FCC 65-959) to include a consideration of TELPAK's C and D within that docket, was mindful of the fact that the only remaining issue with respect to TELPAK C and D was whether the existing rates were compensatory. This issue deals with the over-all level of earnings for the services and does not relate to a detailed analysis of the specific rates involved. Accordingly, since Docket No. 16258 contains within it the issues of the proper rate of return and the relationships of the level of earnings of the different classes of services, it is the proper proceeding within which to determine the compensatory nature of TELPAK C and D and their relationship to the other services.
>
> * * * As we have previously stated, the only issue remaining with respect to TELPAK C and D is whether the rates are compensatory. As stated in paragraph 12 hereof, this issue deals with the over-all level of earnings and does not relate to a detailed analysis of the specific rates involved, and is therefore appropriate for determination in Docket No. 16258. (Emphasis added).

On four additional occasions the Commission has continued to recognize through various proceedings that the initial issue whether the original TELPAK C and D rates were compensatory is "outstanding" and "unresolved". [9]

12. Over the years, changes in the over-all interstate earnings level have been achieved by the Bell System by adjustments in the MTS and WATS rates, the monopoly services constituting about 87 percent of total interstate revenues. While increases were filed in 1952 and 1953 in

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8/ 6 F.C.C.2d 177 (1966).

9/ AT&T General Rate Investigation, 18 F.C.C.2d 761, 764, 768 par. 4 (1968); TELPAK-Private Line Rate Case, FCC 68-388, 33 Fed. Reg. 5900 (1968), 20 F.C.C.2d 383, 387 (1969), 33 F.C.C.2d 522, 525 (1972).

MTS rates in order to raise the level of interstate earnings, thereafter in 1958, 1963, 1965, and 1969 the interstate earnings level was reduced by reducing MTS rates through the continuing surveillance method of rate regulations, and in 1967 and 1968 as a result of the Commission's orders in Phase I-A of Docket No. 16258.[10/] The February 1, 1970, reductions in MTS rates included an offset of $87 million for rate increases in TELPAK and other services[11/] in order to maintain the rate of return at the level resulting from the other $150 million in MTS reductions.[12/]

13. On the other hand, since 1963, when the Commission in the Private Line Case, Docket No. 11645, directed reductions in the level of private line telephone rates and increases in private line telegraph channel and station equipment rates,[13/] the significant rate changes for private line services have been increases.[14/] There have been constant increases in TELPAK rates resulting from the elimination of TELPAK A and B in 1967,[15/] the substantial "interim" rates increases which became effective September 1, 1968,[16/] the further substantial rate increases which became effective

10/ Docket No. 18128, Bell Exhibit No. 21, p. 11.
11/ FCC Public Notice 38859, FCC 69-1210, November 5, 1969.
12/ TELPAK-Private Line Rate Case, 21 F.C.C.2d 1 (1970).
13/ Private Line Cases, 34 F.C.C. 217 (1963) affirmed sub nom Wilson & Co. v. United States, 335 F.2d 788 (7th Cir. 1964), cert. denied, 380 U.S. 951 (1965).
14/ Docket No. 18128, Bell Exhibit No. 21, p. 2
15/ AT&T Revised Tariff Schedules for Private Line Services and Channels, 9 F.C.C.2d 153 (1965).
16/ TELPAK-Private Line Rate Case, FCC 68-388, 33 Fed. Reg. 5900 (1968).

February 1, 1970 [17] the elimination of the sharing provisions of the TELPAK tariff, [18] and the further increases in TELPAK terminal and CCSA charges which became effective May 4, 1972. [19]

14. The effect of the TELPAK rate increases alone can be seen in the following table:

TELPAK Rate Increases: 1968, 1970, 1972

	Original Tariff	First Increases 9/1/68	Percent Increase	Second Increases 2/1/70	Percent Increase over 1968	Third Increases 2/4/72	Percent Increase over 1968
Base Capacity (Per Airline Mile Per Month:							
TELPAK C (Type 5700)	$25.00	$28.00	12%	$30.00	20%	$30.00	20%
TELPAK D (Type 5800)	45.00	60.00	33	85.00	89	85.00	89
Service Terminals, Connecting Arrangements (Per Month)	15.00	25.00	67	35.00	133	40.00	167
Additional Terminals and Arrangements (Per Month)	5.00	10.00	100	15.00	200	20.00	300
Telegraph/ Telephone Equivalency	12:1	6:1	100	2:1	2:1	2:1	500

17/ TELPAK-Private Line Rate Case, 20 F.C.C.2d 380 (1969).

18/ Decision and Order on Remand, TELPAK Sharing Case, 31 F.C.C.2d (1971), reconsideration denied, 32 F.C.C.2d 619 (1971), affirmed sub nom. National Assn. of Motor Bus Owners v. FCC, 460 F.2d 561, 24 R.R.2d 2052 (2d Cir. 1972).

19/ TELPAK-Private Line Rate Case, 38 F.C.C.2d 522 (1972).

15. The comparative changes in the rate levels of AT&T's principal classes of service during recent years are reflected in the following table:

Changes in the Level of Rates of AT&T Classes of Service

Year	Message Toll and WATS Telephone Service	Private Line Services
1959	MTS rates reduced to reduce the System's interstate earnings	
1963	MTS rates adjusted to produce a net reduction in interstate earnings	
1965	MTS rates adjusted to reduce the overall level of interstate earnings	
1967	MTS rates reduced to reduce revenues approximately $1.3 million	TELPAK A and B eliminated. Private line telegraph rates increased, private line telephone rates restructured, to produce rate increase
	MTS rates reduced by $100 million to reduce annual interstate revenues under Phase I-A of Docket 16258 (7-7.5% rate of return)	
1968	MTS rates reduced an additional $20 million to reduce annual interstate revenues	"Interim" private line rate increases in TELPAK C and D, telegraph/telephone equivalency reduced from 12:1 to 6 to produce rate increase
1970	MTS and WATS rates reduced $150 million to reduce annual interstate revenues plus an additional $87 billion to offset private line rate increases	TELPAK C and D, program transmission, and TWX rates increased by $87 million
1959-1970	MTS and WATS rates reduced by $500 million	Private line rates increased by $200 million

Year	Message Toll and WATS Telephone Service	Private Line Service
1971	MTS and WATS rates increased by $250 million subject to hearing to increase annual interstate revenues (Docket No. 19129)	
1972	MTS and WATS rates increased by $145 million to increase annual interstate revenues, Docket No. 19129 (8.5-9% rate of return)	Private line rates increased $36 million by increases in charges for terminals, switching arrangements access, and elimination of TELPAK sharing

16. Accordingly, when it came time in 1972 to apply an authorized increase in AT&T revenues at the conclusions of Phase I in Docket No. 19129, 20/ the Bell System properly recognized that the revenue increase should be realized by an increase in MTS and WATS rates, and not by a still further increase in private line rates. Bell observed in a pleading filed in Docket No. 19129 on December 19, 1972, pp. 4-5:

> Respondents' proposed rate filing of December 1, makes it abundantly clear that no increased rates have been proposed at this time for the private line services, not to insulate such services from rate increases but, on the contrary, because proportionately higher increases recently became effective for the private line services than are now being proposed for MTS and WATS. Thus, while the MTS and WATS revenue effects from the proposed increases amount to an increase of 2 per cent of their respective revenues the revenue effect of the private line increases that became effective only seven months ago represent a 3.6 per cent increase in revenue from these services. It is entirely appropriate to take into account these private line rate changes. As we pointed out in Docket No. 18128 with respect to these rates:
>
> > With respect to the balance of the increases needed to achieve the earnings level shown to be required in Phase I of Docket No. 19129, $36 million will be provided by the net effect of the proposed changes in private line rates and the elimination of Telpak sharing. (Bell Exhibit 21, p. 13).

20/ 38 F.C.C.2d 213 (1972).

> Moreover, since 1963, there have been private line increases totaling approximately $200 million on an annual basis. By contrast, prior to the January 1971 rate increase, MTS rate levels had been reduced consistently since 1959 in an amount exceeding $500 million on an annual basis. (Emphasis added).

17. In giving permission to AT&T to file the proposed MTS-WATS rate schedule subject to an accounting, the Commission rejected the notion that rate incresases are to be distributed by some formula among all of Bell's classes of service and reaffirmed that the questions of rate making principles and factors, the rate levels of individual classes of service, and the rate relationships among the various classes of service are issues which must first be determined in another pending proceeding, Docket No. 18128. [20/] These are issues which were first raised in the AT&T General Rate Investigation, Docket No. 16258, instituted in 1965. [21/] Time and time thereafter, the Commission has recognized that the question whether additional revenue requirements claimed by the Bell System are to be met by imposing higher charges on one class of service than on another, or what contribution each service should make to the over-all revenue requirements of the Bell System, was a matter to be determined in Docket No. 18128, discrete from the rate of return issue in other proceedings, and that it is Docket No. 18128 which is concerned with the principles which should govern in the assignment of the Bell System's revenue requirements among its principal classes of services. [22/]

20/ 38 F.C.C.2d 984, 985, 987 (1973).
21/ 2 F.C.C.2d 871 (1965); 2 F.C.C.2d 142 (1965); 5 F.C.C.2d 844 (1966).
22/ See, e.g., 6 F.C.C.2d 177, 180-181 (1966); 27 F.C.C.2d 151, 155-156 (1971); 30 F.C.C.2d 503, 504 (1971); 38 F.C.C.2d 213, 216-217, 246 (1972); 38 F.C.C.2d 492, 493 (1972); 42 F.C.C.2d 293, 297 (1973).

In establishing the procedures for the investigation in Docket No. 19129, the Commission noted it had "referred to the pendency of proceedings in Docket No. 18128 in which the determination of appropriate relationships among the earning level of each of AT&T's several classes of interstate service is to be made, [23] and stated: [24]

> The subject tariffs filing rest on an implicit conclusion that the additional revenue requirements claimed by AT&T and the Bell System companies should be met by imposing higher charges on MTT users, to the exclusion of increases or adjustments in the rates of other classes of service provided by them. The basis for this assumption is not shown and we expect AT&T to carry the burden of proof on this issue in Docket No. 18128, inwhich we also expect AT&T to demonstrate that the instant rate increases do not involve any cross-subsidization of other services provided by the carriers involved [Emphasis added].

19. Acting on petitions for reconsideration and clarification of its hearing order, the Commission [25] stated:

> Specifically at issue in MTT Docket No. 19129 are increased rates for message toll (long distance) telephone service. Such rates are now in effect subject to accounting and refund. The justness and reasonableness of these increased rates (presently effective) is dependent inter alia, upon two factors now under investigation: (1) the required rate of return for the Bell System's interstate services collectively; and (2) the proportion in which each of the services shall contribute to the accomplishment of that rate of return upon net investment. The first factor is at issue in MTT Docket No. 19129, the second is at issue herein. [Docket 18128 et al]. The lawfulness of the specific increased rates filed by AT&T for message toll telephone service cannot be determined without resolution of both questions. [Emphasis added]

23/ 27 F.C.C.2d 151, 154 (1971).
24/ 27 F.C.C.2d at 155-156.
25/ FCC 71-274 (March 17, 1971).

20. In a ruling on a petition by AT&T for separation of the Trial Staff in Docket No. 18128, the Commission stated: [26/]

> In the first phase of 19129 we will determine the rate of return to the Bell System. In 18128, accepting that rate of return, we will determine what contribution each service should make to the over-all revenue requirements of the Bell System. Thus, although the two cases are related, the issues in each case are discrete.

In folding in a further round of increases in 1972 into Docket No. 18128, the Commission declared: [27/]

> The fundamental questions which this [Docket 18128] proceeding is expected to resolve are: what should be the appropriate earnings relationships among the various interstate services offered by the Bell System? and, how should the contribution to total earnings by each service be measured?

21. In the Decision and Order on Phase I of Docket No. 19129 the Commission noted: [28/]

> We made clear in our Order of January 21, 1971, that with respect to the Phase I overall rate of return issue, there was a concurrent proceeding under way in Docket 18128 that involves questions relating to the implementation of our findings in Phase I on rate of return. Thus, the issues in Docket 18128 concern, inter alia, the principles that should govern in the assignment of the Bell System's revenue requirement among its principal classes of interstate and foreign. Accordingly, our January 21, 1971 Order provided that implementation of our findings in Phase I will be subject to the determinations to be made in Docket 18128 insofar as they relate to the assignment of revenue requirements to MTS that we may find herein in Docket 19129.

26/ 32 F.C.C.2d 89, 90 (1971).
27/ 33 F.C.C.2d 522, 524 (1972).
28/ 38 F.C.C.2d 213, 216-217 (1972).

22. After a series of pleadings in which MCI sought to impose an equal distribution of the rate increase among AT&T's various classes of service, the Commission said in apparent exasperation: 29/

> MCI's Petition for Reconsideration seeks to raise the issue of rate relationships between MTS and the other services offered by AT&T. * * * All of the arguments advanced by MCI relate to a determination of the proper rate relationships between MTS and AT&T's other services. We have ruled on at least four prior occasions that the questions of rate relationships between AT&T's various services will be resolved in Docket No. 18128, and is not in issue in Phase I of this proceeding [footnote citations omitted]. We believe that our reasoning in these decisions is sound and needs no further amplification; and therefore, MCI's Petition for Reconsideration will be denied (Emphasis added).

23. Accordingly, time and time again the Commission has permitted rate increase after rate increase to go into effect when the fundamental underlying issues remains to be resolved, as to what extent, if at all, classes of service other than MTS and WATS, such as private line in general or TELPAK in particular, should be required to bear a rate increase in order to raise AT&T's over-all rate of return. Since an early resolution of the difficult basic issues in Docket No. 18128 now may be anticipated, with a Recommended Decision by the Chief of the Common Carrier Bureau well past due, it clearly would be most onerous and unfair for TELPAK users to suffer a fourth round of increases before the propriety of any increase has ever been established. The pyramiding of rate increases on TELPAK users has seriously prejudiced their right to a determination of the validity of the original rates, since it must be recognized as a pragmatic consideration that a full and fair determination of the propriety of a rate level is immeasurably,

29/ 42 F.C.C.2d 293, 297 (1973).

possibly hopelessly, compromised when not one or two but three higher levels are superimposed for consideration. Basic fairness, it is submitted, requires that the Commission now draw the line against any further imposition of rate increases upon TELPAK users until the appropriate rate making principles and factors, rate levels, and rate relationships be established by a final decision in Docket No. 18128.

IV. The Commission Possesses Plenary Power to Prohibit Further Rate Increases Upon TELPAK When Three Earlier Rate Increases Are Already the Subject of an Unresolved Rate Proceeding

24. The plenary power of a Federal agency to prohibit the pyramiding of rate increases, despite statutory limitations on suspension, is well established. In upholding the authority of the Federal Power Commission to impose a moratorium on proposed rate increases, the Supreme Court said in the Permian Basin Area Rate Cases:[30/]

> Certain of the producers * * * reason that §4(d) creates an unrestricted right to file rate changes, and that such changes, may, under §4(e), be suspended for a period of no longer than five months. If this construction were accepted, it would follow that area proceedings would terminate in rate limitations that could be disregarded by producers five months after their promulgation. * * *
>
> * * *[T]his Court has already declined to find in §4(d) or §4(e) an invincible right to raise prices subject only to a six month delay and refund liability. (Emphasis added)

In FPC v. Texaco, Inc.[31/] the Supreme Court similarly recognized that an administrative agency, despite suspension limitations, may cut off successive rate increases at the threshold:

30/ 390 U.S. 747, 779 (1968).
31/ 377 U.S. 33, 42-44 (1964).

> It must be remembered that under this Act rate increases are initiated by the natural gas company, the Commission having the burden by reason of § 4(e) of the Act to initiate a hearing on their legality with only a limited power to suspend new rates. * * * Natural gas companies that seek to enter the field with prearranged escalator clauses and the like have a built-in device for ready manipulation of rates upward. Protection of the consumer interests against that device may best be achieved if it is given at the very threshold of the enterprise. At least the Commission may so conclude * * * .
>
> To require the Commission to proceed only on a case-by-case basis would require it, so long as its policy outlawed indefinite price-changing provisions, to repeat in hearing after hearing its conclusions that condemn all of them. There would be a vast proliferation of hearings * * *. We see no reason why under this statutory scheme the processes of regulation need be so prolonged and so crippled.

25. The power of the agency to impose a moratorium was "unquestionably set at rest [32/] in United Gas Improvement Co. v. Gallery Properties, Inc., [33/] where the Supreme Court upheld the "ample power" of the Commission to keep the price level relatively constant pending determination of the just and reasonable rate for consumer protection during the interim period. Congress, the Supreme Court said in FPC v. Hunt, [34/] could not have intended "any such incongruous result" as to permit the Commission's power to review rates to be nullified by subsequent independent action by the regulated entity filing new rates. The Court there repeated and reaffirmed the language of Atlantic Refining Co. v. Public Service Comm'n [35/] in response to a claim that the vitality of the suspension provisions was being impaired:

32/ Continental Oil Co. v. FPC, 373 F.2d 510, 527 (5th Cir. 1967), cert. den. 491 U.S. 917 (1968).
33/ 382 U.S. 223, 228 (1965).
34/ 376 U.S. 515, 522, 523-524 (1964).
35/ 360 U.S. 378, 391-92 (1959).

> This is not an encroachment upon the initial rate-making privileges allowed natural gas companies under the Act, * * * but merely the exercise of that duty imposed on the Commission to protect the public interest in determining whether the issuance of the certificate is required by the public convenience and necessity * * *. [I]t so conditions the certificate that the consuming public may be protected while the justness and reasonableness of the price fixed by the parties is being determined under other sections of the Act.

To the extent that Willimut Gas & Oil Company v. FPC [36/] indicated the contrary, that decision has been superseded by more recent decisions of the Supreme Court such as the Texaco case [37/] (where the lower Court had relied upon the Willmut case approach) [38/] the Callery case (where the Commission had treated cases such as Willmut as "judicial aberrations", [39/] and the Permian Area Rate Cases. [40/]

36/ 111 U.S.App.D.C. 49, 294 F.2d 245 (1961), cert. den. 368 U.S. 972 (1962), reh. den. 369 U.S. 813 (1962).

37/ FPC v. Texaco, Inc., 377 U.S. 33 (1964).

38/ 317 F.2d 796, 805 fn. 28 (10th Cir. 1963).

39/ See 335 F.2d 1004, 1017 (5th Cir. 1964). The Fifth Circuit had disagreed with the Commission's claim of the "necessity for, and the existence of, a power to take whatever action, impose whatever conditions to assure that 'excessively higher rates are absolutely prevented from being charged.'" 335 F.2d at 1018. The Supreme Court rejected the narrower construction by the Fifth Circuit of the Commission's power. Even the separate opinion of the Supreme Court, concurring in part, dissenting in part, disagreed with the contention that the stature "must be read to bestow on producers an invincible right to raise prices subject only to a six-month delay and refund liability." 382 U.S. at 232.

40/ 390 U.S. 747 (1968).

26. In the Ingot Molds case,[41] the Supreme Court upheld the authority of another agency, the Interstate Commerce Commission, to hold the line on existing rates while it was considering, as the Commission is in Docket No. 18128, general ratemaking principles:

> We have already observed that the ICC has presently pending before it a broad-scale examination of the whole question of the cost standards to be used where comparisons of intermodal cost advantages are required. * * *
>
> This Court has just recently held that the Federal Power Commission had the authority to fix rates on an area-wide basis rather than on an individual producer basis and that, in order to make such a procedure feasible, it had statutory authority to impose a moratorium upon rate increases by procedures for a period of 2-1/2 years after the setting of the area rate. * * * The basis for this holding was the principle that the 'legislative discretion implied in the rate making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself.'* * * That principle is equally applicable to rate regulation carried out by the ICC * * * *. (Emphasis added).

27. In other cases the Courts have also emphasized the broad regulatory powers of this Commission in the context of CATV regulation to effectuate its statutory responsibilities, and to provide interim relief pending hearing determinations. In United States v. Southwestern Cable Co.,[42] the Supreme Court quoted from the Permian Basin Area Rate Cases, supra, "We have elsewhere held that we may not, 'in the absence of compelling evidence that such was Congress's intention . . . prohibit administrative action imperative for the achievement of an agency's

41/ American Commercial Lines, Inc. v. Louisville & N.R.R. Co., 392 U.S. 571, 590, 592 (1968).

42/ 392 U.S. 157, 177, 180-81 (1968).

ultimate purposes'", and further declared:

> The Commission has acknowledged that, in the area of rapid and significant change, there may be situations in which its generalized regulations are inadequate, and special or additional forms of relief are remedial. It has found that the present case may prove to be such a situation, and that the public interest demands "interim relief . . . limiting further expansion", pending hearings to determine appropriate Commission action. Such orders do not exceed the Commission's authority. * * * Thus, the Commission has been explicitly authorized to issue "such orders, not inconsistent with this [Act], as may be necessary in the execution of its functions". 47 U.S.C. §154(i). See also 47 U.S.C. §303(r). In these circumstances, we hold that the Commission order limiting further expansion of respondents' service pending appropriate hearings did not exceed or abuse its authority under the Communications Act. 43/

28. In General Telephone Co. of California v. FCC, the United States Court of Appeals for the District of Columbia Circuit further extended the implicit regulatory authority of the Commission in aid of its explicit powers, rejecting an argument that the provision for one method of enforcement was exclusive and precluded the availability of other remedies to the Commission: "The contention that Section 312(b)'s enforcement techniques are restricted in applicability to those parties particularly subject to the general regulatory provisions of Title III also runs contrary to the reasoning of recent decisions emphasizing the flexibility which an expert regulatory agency must possess if it is to keep pace with a still burgeoning industry."

43/ 413 F.2d 391, 409 (U.S.App.D.C. 1969), cert. den. 396 U.S. 888 (1969).

29. In broadcast matters, the Commission has not hestiated [44/] to impose a "freeze" on broadcast license applications without express statutory provisions, pending determination of general proceedings relating to the allocation of frequencies or the assignment of channels despite the direction of Section 309 of the Communications Act, as amended, that it either "shall grant" an application or "shall formally designate the application for hearing."

The power of the Commission to grant the necessary relief appropriate under the circumstances is reflected, however, not only in the cases cited, but in Section 4(i) of the Communications Act, which authorizes the Commission "to perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions"; in Section 4(j) of the Act, which authorizes the Commission "to conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice"; and in Section 203(b) of the Act, which provides that the Commission may, "in its discretion and for good cause shown, modify the requirements" as to statutory suspensions "in particular instances or by a general order applicable to special circumstances or conditions."

31. The decision of the United States Court of Appeals for the District of Columbia Circuit in Associated Press v. FCC, [45/]

44/ Interim Criteria to Govern Acceptance of Standard Broadcast Applications, 23 R.R. 1545 (1962), 24 R.R. 1540 (1962); Kessler v. FCC, 326 F.2d 673, 681 (U.S.App.D.C. 1963); Harvey Radio Laboratories, Inc. v. United States, 289 F.2d 458, 460 (U.S.App.D.C. 1961); Harbenito Broadcasting Co. v. FCC, 218 F.2d 28 (1954); Vindicator Printing Co., 8 R.R. 328 (1952) cf. American Broadcasting Co. v. FCC, 191 F.2d 492 (1951).

45/ [illegible] U.S.App.D.C. 172, 448 F.2d 1095 (1971).

does not require a contrary conclusion. This Commission itself has not categorically rejected its plenary power to reject tariffs under appropriate circumstances, but in cases such as those involving the 1969 TELPAK rate increases, has merely held that it finds no necessity for the imposition of such extraordinary relief, while not deciding on the extent of its authority to grant the kind of relief requested.[46/]

In upholding the refusal of the Commission to reject a second TELPAK tariff increase, the Court of Appeals several times in the Associated Press case observed that the Commission was acting within an acceptable areaof its discretion, and that it would not "review the judgment of the Commission", and that "the Commission's conclusion was not unreasonable".[47/] The case thus affirms that the Court will not reverse a reasonable exercise of discretion to permit a tariff to become effective after suspension; it does not hold that the Court will not permit the Commission to exercise a reasonable discretion to reject a tariff. Thus the Court affirmatively recognized "the power and in some cases the duty" of the Commission "to reject a tariff that is demonstrably unlawful on its face."[48/] The Associated Press decision may therefore be read as an extension of the Arrow Transportation case[49/] that the Court will not interfere with either a Commission action or a Commission refusal to act, at least

46/ TELPAK-Private Line Rate Case, 20 F.C.C.2d 383, 386 (1969).
47/ 145 U.S.App.D.C. at 181, 182, 183, 448 F.2d at 1104, 1105, 1106.
48/ 145 U.S.App.D.C. at 180, 448 F.2d at 1103.
49/ Arrow Transportation Co. v. Southern R. Co., 372 U.S. 658 (1963).

where the Commission has acted reasonably and exercised a reasonable discretion. And certainly a refusal to permit a fourth round of TELPAK rate increases to become effective, when the propriety of the original, first round of increases, the second round of increases, and the third round of increases, is still in litigation, and an early decision may be expected, cannot be said to be in any way unreasonable or an abuse of discretion.

33. Under all these circumstances, it is respectfully submitted that the Commission both can and should reject this fourth "pancaking" of Telpak rate increase upon Telpak rate increase upon Telpak rate increase upon Telpak rate increase, without any determination of impropriety in the original Telpak C and D rates, much less any determination of the propriety of any of the intervening increases, or of the rate making principles and factors for determining such propriety or impropriety. It is difficult to believe that the Commission would find itself powerless to halt such abuse of its processes.

V. AT&T Has Failed to Meet the Reporting Requirements of Section 61.38 of the Commission's Rules

34. It is beyond dispute that the Commission has the power to reject where the tariff filing in question fails to meet the requirements of the Commission's own Rules for such filing. That the present filing fails to meet these requirements is demonstrated by two analyses prepared by a qualified economist-cost analyst expert, Mr. Charles King, and filed herewith in support hereof marked for identification as Appendices A and B. The First Appendix (A) shows the general deficiencies in the present tariff filing and the second Appendix (B) demonstrates the more specific deficiencies, as applied to the proposed fourth round of Telpak rate increases.

WHEREFORE, THE PREMISES CONSIDERED, The Air Transport Association of American respectfully petitions that the Commission reject the private line service tariff increases in AT&T Transmittal No. 12241, filed January 3, 1975, or request or require their withdrawal or postponement pending final decision in Docket No. 18128; or that the Commission suspend the operation of such increases for the full statutory period and enter upon a hearing and investigation, subject to an accounting;

and that the Commission grant such other or further relief as to the Commission may seem just and proper in the premises.

Respectfully submitted,

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January 28, 1975

ANALYSIS BY CHARLES KING OF GENERAL DEFICIENCIES IN AT&T'S TARIFF FILING OF JANUARY 3, 1975

In its final report and order in Docket No. 18703,[1] the Commission adopted a new section 61.38[2] to its rules, which defines the support material required to be submitted by carriers filing tariff changes. Paragraph (a) identifies the explanatory material and data which must be submitted in support of a changed and/or new tariff offering.[3]

> "(i) For changed matter, a cost of service study for all elements of costs for the most recent 12-month period; and for changed and new matter a study containing a projection of costs for a 3-year period beginning at the date of the filing of the tariff matter; and
> (ii) Estimates of the effects of the changed or new matter upon the carrier's traffic and revenues from the service to which the changed or new matter applies; upon the traffic and revenues from the other service classifications of the carrier; and upon the overall traffic and revenues of the carrier. Estimates should include the estimated effects on the traffic and revenue data for the most recent 12-month period and projections for a 3-year period beginning at the date of the filing of the changed or new matter. Complete explanations of the bases for the estimates should be provided."

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[1] Amendment of the Commission's Rules Relating to Tariffs and Evidence, FCC 70-1096, 25 FCC 2d 957 (1970).

[2] 47 C.F.R. Sec 61.38.

[3] Id., paragraph (a).

1. The rate increases which Bell proposes are in fact greater than the support material filed by Bell would indicate.

In his cover letter to Chairman Wiley of the FCC, James R. Billingsley, Vice President of AT&T, stated that the rate adjustments requested by Bell are "designed to produce a 7.2 percent net increase in Bell's interstate revenues."[1] Attachment A to Bell Statement 2 shows that Bell anticipates total revenues of $9,097 million at present rates in 1975. Attachment K of Bell Statement 6 shows that the rate proposals will generate a net revenue increase of $717 million. The percentage relationship of these two numbers is not 7.2 percent, as Mr. Billingsley states, but 7.9 percent.

Furthermore, the 7.9 percent is not a measure of the composite increase in rates. It represents the difference between two levels of revenue derived from disequal volumes of traffic. Bell forecasts that the rate increase will cause a contraction of 195 million message toll messages and 1,512 WATS lines in 1975.[2] Thus, the 1975 traffic base with the rate increases in effect is smaller than the 1975 traffic base under present rates. The requested rates applied to the same traffic base would therefore generate a revenue increase greater than 7.9 percent.

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[1] Letter from James R. Billingsley to Richard E. Wiley, January 3, 1975, page 1; also, Bell Statement 1, page 6.

[2] Traffic and Revenue Data, Volume 1, page 6.

2. Bell has not submitted "a projection of costs for a three-year period beginning at the date of the filing of the tariff matter."

Volume 1 of the Cost Data submitted by AT&T contains what the company purports to be its response to subparagraph (i) above. Section 5 of that volume displays Bell's revenues, expenses and investments for the 12-month period ended August 31, 1974. These data are separated into eight service categories according to four different cost allocation methodologies. This section purports to fulfill the Commission's requirement for "a cost of service study for all elements of costs for the most recent 12-month period."

Sections 2, 3 and 4 show cost differentials during 1975, 1976 and 1977, respectively, reflecting the differences in quantities of service anticipated at present rates and at the proposed rates. None of these sections contain any estimate of the costs of the changed matter, which would include seven out of the eight service categories shown in Section 5. All of these differentials are negative quantities, suggesting that costs at the proposed rates will be lower than costs at the present rates. Yet nowhere in that volume, nor in the supporting "Cost Data" volumes, are there any explicit displays of the base total costs during 1976 or 1977 either before or after the application of the differentials.

In only one place in the entire filing is there a presentation of future total costs, and that is not even in the material which purports to respond to Section 61.38. The attachments to Bell Statement 2, "Bell System Interstate Operating Results" contain a "1975 View" of the System's total interstate costs under Bell's accounting plan and under the accounting plan used by the Commission in FCC Docket No. 16258. These "views," however, represent costs only at existing rates, not at the requested rates, nor do they reflect the 1974 labor agreement.[1] Although it is possible to construct a 1975 "view" according to AT&T's accounting plan by applying the differential revenue and cost quantities in Attachment K of Bell Statement 6 to the data in Attachment A of Bell Statement 2, Bell has not provided any display of the full cost and revenue condition of its interstate operations after the rate increases have been put into effect. As a consequence, there is nowhere in the filing an explicit computation of the 10 3/4 percent rate of return projected by Bell for 1975.[2]

Even less information is available for the forecast years 1976 and 1977. Sections 3 and 4 of Cost Data Volume 1 present the differences in expenses and investment between their estimated levels in 1976 and 1977, respectively, under existing rates and under new

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[1] Bell Statement 1, page 5.

[2] Bell Statement 2, page 16.

rates. They contain no estimates of the absolute levels of cost in those years, nor are such estimates displayed in any of the other "Cost Data" volumes supporting the summary Volume 1. Apparently, Bell interprets the word "costs" in Section 61.38(a)(1) as meaning absolute levels of cost in the retrospective context, that is, for the most recent 12-month period, but as differential costs in the prospective context, that is, for the three-year projection. The section itself offers no indication that Bell's interpretation is correct. There is not even the suggestion that the meaning of "costs" should be radically different prospectively as compared with retrospectively.

The impropriety of Bell's interpretation of the section's requirements is made obvious by a test of meaningfulness. The cost differentials which Bell has provided are totally meaningless in the absence of any estimates of the corresponding base costs to which they can be related. The Commission cannot possibly know the significance of a contraction in annual costs of $279 million[1] in 1977 without some impression of the absolute level of costs in that year. Nor does a projected contraction of $1,091 million in net investment[2] convey any meaning without any impression of the investment base to which it should

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[1] Cost Data Volume 1, page 013.

[2] Ibid.

be applied. Such base estimates are simply absent from Bell's presentation.

Even assuming, arguendo, that measures of cost differentials created by the rate change were indeed an appropriate response to the forecasting requirements of Section 61.38(a)(i), the data presented by Bell apparently do not in fact measure that effect. According to Bell Statement 1, the estimate of Bell's 1975 interstate revenue, expenses and return on investment at present rates which is contained in the attachments to Bell Statement 2 "does not reflect the full year's impact of increased labor costs which will rise again in mid-1975 pursuant to the recent labor settlement."[1] Cost Data Volume 1, however, states that the projected cost results for 1975, 1976, and 1977 "reflect the estimated effect of the 1974 Bell System labor agreements."[2]

Bell does not explain how the 1974 labor agreements are reflected in the 1975-1977 cost data. As indicated, those data are negative differentials which measure the contraction in cost resulting from the price-elastic responses in demand to the proposed rate increases. If the labor agreement effects are reflected in these differentials, as Bell's description would suggest, then the "pure"

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[1] Bell Statement 1, pages 5-6.

[2] Cost Data Volume 1, page 004.

cost effect of the price-elastic response is much greater than Bell shows. Specifically, Bell shows that the repression in demand caused by the rate increase would reduce expenses by $192 million and investment by $880 million in 1975. If these estimates are the net effect after deducting the offsetting increase in cost from the 1974 labor agreement, then the actual contraction in cost specifically resulting from reduced consumer demand must be somewhat greater. Thus, even if the forecasting requirements of Section 61.38(a)(i) are as Bell interprets them, the data presented by Bell do not conform to that interpretation, but include the effects of a wholly extraneous consideration, the labor agreements of 1974.

3. Bell has not submitted "estimates of the effects of the changed or new matter upon the carrier's traffic and revenues from the service to which the changed or new matter applies."

Among the effects of Bell's rate proposal will be a contraction in demand owing to the price-elastic responses of the market to the higher prices contained in the new tariffs. Unaccountably, Bell has attempted to measure these price-elastic responses for only two of the eight major service categories affected by this rate increase, message telephone service (MTS) and WATS. Yet these two services can reasonably be expected to show the least price elasticity because, unlike Bell's private line offerings, they are sold in almost purely monopoly markets.

As for the private line services, Bell has apparently assumed that its 7.8 percent rate increase[1] would cause no market reaction whatever. Tables 18 to 46 of Traffic and Revenues Volume 1 reveal that except for Series 2000/3000 telephone service, the market quantities of each of the private line offerings would remain unchanged between present rates and new rates. Even for Series 2000/3000 the only changes in market quantities between the present and new rates were those produced by MTS/WATS/Private Line interservice cross-elasticities.

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[1] Bell Statement G, page 26.

There was no reflection of repressed demand owing to market price elasticities.[1]

In prior filings, Bell has explicitly acknowledged that such price elasticities do indeed exist in the markets for the various private line services. In a market study of private line services made in connection with FCC Docket No. 18128, Bell classified market reactions in three categories, (1) shifts to or from other Bell services, (2) shifts to or from competitive services, and (3) repressed or stimulated demand.[2] In the instant filing Bell has measured only the first of these three categories and this only with respect to shifts between MTS, WATS and Series 2000/3000. Yet in its Docket No. 18128 studies, Bell analyzed a test rate schedule (No. 5) which assumed a 15 percent increase in the rates for Series 1000, 2000, 3000, and 4000 private line services. That study indicated that an increase of this magnitude in private line telegraph (Series 1000) rates would reduce the airline miles leased in that service by three percent.[3] Similarly, a 15 percent increase in private line telephone and telephoto rates (Series 2000, 3000, 4000) would contract demand by 3.6 percent.[4]

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[1] Traffic and Revenue Data, Volume 5, page 005.

[2] FCC Docket No. 18128, Appendix to Bell Exhibit 1, Section 5.

[3] FCC Docket No. 18128, Appendix to Bell Exhibit 1, page 4-1.

[4] Ibid.

while it is reasonable to suppose that a rate increase of 7.8 percent would generate a somewhat smaller contraction in demand, it is unreasonable to assume, as Bell has done, that there would be no contraction whatever.

Also, as part of the same market study, Bell analyzed a series of four alternative rate schedules for the TELPAK service (Series 5000). One of these test schedules (No. 3) involved an aggregate weighted rate increase of 28 percent.[1] Bell's study indicated that this rate increase would cause approximately 9.7 percent[2] of the TELPAK telephone channel miles either to divert to competitive forms of communication or to disappear altogether due to repressed demand. In fact, as discussed in Appendix B to these comments, these estimates of elasticity are almost certainly understated.[3] Nevertheless, even as estimated by Bell, they demonstrate the presence of substantial price elasticities for the TELPAK service. Bell has offered no justification for ignoring these effects of the rate increase.

The consequences of these omissions cannot be predicted without knowing the specific revenue/cost relationship of the market quantities lost owing to the repressed or diverted private line demand.

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[1] Id. pages 1.1 and 6.1.

[2] Id. pages 4.1 and 5.1.

[3] FCC Docket No. 18128, Proposed Findings of the Airline Industry Parties, pages 83 to 125.

If the lost revenue exceeds the costs saved, then the rate of return earned will be less than that forecast by Bell. Conversely, if the cost reduction exceeds the revenue loss, then Bell's rate of return will be greater than that forecast. One thing is reasonably certain: except in the highly unlikely situation that the revenue loss and the cost (including return) savings resulting from these private line elasticity effects exactly balance, Bell will not realize a rate of return of 10.75 percent on its 1975 investment under the proposed rate schedules as it has forecast.

4. Accepting, arguendo, the relevance of Bell's projections for purposes of Section 61.38 of the Commission's rules, the market studies which underlie them are invalid.

A. Bell's forecasts of MTS message volumes are based on outdated economic data.

Bell based its projections of MTS message volumes on forecasts of economic variables for 1975, 1976 and 1977. Specifically, forecasts of business message volumes were based upon projections of disposable personal income, the Consumer Price Index and the AT&T Index of Industrial Activity.[1] Forecasts of residence message volumes were based on projections of disposable personal income and the Consumer Price Index.[2]

These projections were made by AT&T as of September 20, 1974.[3] Bell has displayed each index for October of each year from 1973 through 1977.[4] Already the October 1974 FRB Index has been revised downward. On January 15, 1975, the Federal Reserve Board issued a revised value of 124.8, a substantial drop from the preliminary figure of 125.5 which Bell employed in its forecasts.

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[1] Traffic and Revenue Data Volume 3, page 31. (The AT&T index, which is no longer published, is based in turn on the Federal Reserve Board's Index of Industrial Production.)

[2] Ibid.

[3] Id., page 32, Footnote.

[4] Ibid.

Data now available for November and December of 1974 indicate a continued decline in economic conditions, not an upturn as Bell's October 1975 estimates would imply. On January 15, 1975, the Federal Reserve Board issued a November Index of 121.7 and a December Index of 118.3. The Bureau of Labor Statistics of the U.S. Department of Labor has indicated December disposable personal income at an annual rate of $1,008.7, a decline from the $1,010.7 October 1974 value reported by Bell.

Recent economic forecasts indicate a continued downward trend. The table below contrasts the forecasts in Bell's filing with estimates released by Data Resources, Incorporated and by the Wharton Economic Forecasting Unit, Incorporated.

Disposable Personal Income

	1974	1975	1976
Bell Filing (October)	1010.7	1111.4	1227.0
Data Resources, Inc. (year)	979.1	1060.3	1184.9
Wharton Economic Unit, Inc. (year)	980.6	1069.6	1171.3

FRB Index of Industrial Production

	1974	1975	1976
Bell Filing (October)	123.5	129.0	134.7
Data Resources, Inc. (year)	124.4	118.8	126.5

The recent Data Resources projections indicate little likelihood of an upturn until at least 1976.

In Bell's own filing, J. J. O'Leary contradicted the economic forecasts Bell used for MTS message volumes. At page 22 of his statement, Mr. O'Leary commented:

> "My own view is that the recovery of business will be gradual in the latter part of 1975 and that economic growth in 1976 will continue to be less than vigorous, with real GNP expanding something like 2-3 percent in 1976."

In spite of this forecast, Bell has assumed a 2.8 percent increase in the FRB Index of Industrial Production between October 1974 and October 1975 and an additional 4.4 percent increase in this Index to October 1976. Using the latest FRB reported Index for December 1974, a jump of 13.9 percent from 118.3 to 134.7 would be required in a 20-month period in order for Bell's forecasts for October 1976 to be realized. Mr. O'Leary does not appear this optimistic.

In spite of these economic downturns, Bell's projections in this filing reflect a very substantial secular increase in MTS message volumes. According to Bell's operating data, the number of messages increased from 3.573 billion in 1973 to 3.854 billion in 1974, a growth of 7.9 percent.[1] At present rates, Bell forecasts

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[1] Bell Statement 2, Attachment A, page 1.

4.260 billion messages in 1975,[1] a growth of an additional 10.5 percent. Furthermore, Bell indicates that at current rates it will handle 5.74 billion messages in 1977,[2] a growth of an additional 35 percent over the two-year period.

Bell has conceded that its forecasts for 1975 may reflect too optimistic a view of the growth of the economy.[3] The implication is that a lower rate of growth will result in a lower level of earnings for the Bell System. However, the Bell documentation provides no evidence that a slower rate of growth would necessarily worsen the company's earnings posture.

Quite the contrary, Bell bases much of its argument for additional revenue need upon the necessity to raise external capital of about $4 billion annually to support the current level of construction expenditures.[4] Indeed, much of Bell's opening statement is devoted to dire warnings of the serious consequences which would result from reductions in the Bell System's construction program. Attachment B

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[1] Ibid.

[2] Traffic and Revenue Data Volume 3, Table 43.

[3] Bell Statement 1, page 5.

[4] Id., page 4.

to Bell Statement 1 reveals that well over 60 percent of Bell's capital program is related to growth. Clearly, the growth of the economy and the requirement to construct new facilities are closely related, so that Bell's needs for construction should decline if, as it appears, the nation's economy declines.

In fact, this reduction in Bell's construction requirements has become manifest within the last week by a reported reduction in the Bell System construction program for 1975 from a previously announced 10.5 billion to the range of 9.9 billion, a lowering of new money requirements of approximately $600,000,000.[1] Since Bell bases much of its justification for an increased rate of return on the burden of raising new capital, the unanticipated slowing of the economy may paradoxically redound to Bell's benefit and reduce rather than increase its need for revenue.

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[1] Telecommunications Reports. January 20, 1975, page 3.

3. Bell's forecasts of the market for private line services are based on obsolete economic data.

Most of Bell's market estimates for its private line services are derived from its filings in FCC Docket No. 19919 which were transmitted to the Commission on February 14, 1974.[1] Thus, its private line market estimates are in virtually all cases based on information at least a year old. Furthermore, a great portion of the economic projection data which Bell used in Docket No. 19919 reflected conditions no more recent than April of 1971.

Bell states that for voice grade private lines "traffic and revenue used as the starting point were taken from the study underlying Bell's revised Series 2000/3000 filing (FCC Docket No. 19919)."[2] Bell's market estimates for 1973, 1974 and 1975 at present rates were taken directly from the Docket No. 19919 study workpapers. Data for 1976 were also obtained from the Docket No. 19919 study workpapers with an adjustment for distances less than 26 miles to reflect recent changes in the interstate short haul rate schedule. Market projections for 1977 were obtained by simple linear extrapolation of the 1973 through 1976 data developed as described above.

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[1] Traffic and Revenue Data, Volume 5, Tab 1.

[2] Ibid.

To estimate the market effect of the proposed Series 2000/3000 rate changes, the only modification which Bell made was to provide for cross-elasticities between some of its private line services, MTS and WATS.[1] Changes in market quantities for each year as determined by the cross-elasticity analysis were algebraically added to the market projections for existing rates used in FCC Docket No. 19919. As indicated above, Bell made no adjustments to reflect overall elasticities (as opposed to cross-elasticities) of its private line services. Nor has Bell made any adjustments to reflect secular market changes since the time of its Docket No. 19919 filing.

Bell states that for most of its other private line services source data were derived in a manner identical to that employed for Series 2000/3000 except that for these other services cross elasticities were not involved.[2] By "not involved," Bell means that these cross elasticities, which it has recognized elsewhere,[3] were simply neglected. For example, Bell developed its market estimates for Series 1000, which includes its subvoice-grade offerings, and Series 5000, its TELPAK offering, directly from its FCC Docket No. 19919 data with no modification to reflect shifts to or from these private line services and other private line services, MTS or WATS. For Series 6000, the traffic and revenue used as a starting point were taken from the 1973

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[1] Ibid.

[2] Ibid.

[3] See Section II of these comments.

private line inventory. These market quantities were adjusted upward to year-end 1974 by applying a one percent annual growth factor, for which Bell provides no justification. Furthermore, Bell's description indicates that the same one percent growth factor was employed to extrapolate 1974 data to 1975, 1976 and 1977, with no rationale provided for this approach.

The Docket No. 19919 data which serve as a source of market projections are in turn based on yet older information. Bell stated, "To project the Series 2000 and 3000 market quantities for the nine-month period ending December 1971 and for calendar years 1973 to 1976 it was necessary to develop growth factors which, when applied to the Series 2000 and 3000 NTC quantities in the Bell System interstate private line inventory of April 1971, would result in new projected quantities for each of these periods."[1] Thus, Bell's private line market quantities in this filing trace back to its April 1971 inventory.

In fact, the trend data is older still. To develop growth factors, Bell considered the state of the national economy in the period October 1967 through April 1971. Bell analyzed two segments of this period: October 1967 through February 1969; and April 1970 through April 1971. An annual growth factor was computed as the simple average

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[1] FCC Docket No. 19919, Bell Exhibit 4, Tab 3.

of the growth rates for these two periods. The same Bell Exhibit 4 of Docket No. 19919 indicates a similar approach for most, if not all, of Bell's other private line offerings. For example, its projections for the period 1973 to 1976 for Series 1000 were also based on a comparison of inventories of certain items in Series 1000 in October 1967, February 1969, April 1970 and April 1971. Inventories for the same times were used to project TELPAK growth in the period through 1976.

5. Accepting, arguendo, the relevance of Bell's projections for purposes of Section 64.[illegible] of the Commission's rules, the cost studies which underlie them are invalid.

Section 1 of Cost Data Volume 1 describes the Bell System cost forecasts for the years 1975, 1976 and 1977 "as incremental cost calculations...based on the difference in quantities of service between estimated levels for each of the three years under existing rates and under new rates."[1]

In interpreting this approach, Bell has translated these differential market quantities into new facility and equipment requirements. These requirements in turn have been multiplied by estimates of the unit costs of new additions of the respective facility and equipment items during the three years of the forecast period. The cost of high capacity, high frequency line transmission, for example, reflects a projection of the average cost of additions of such facilities during the period 1973-1977. Other facilities and equipment costs are based either on the cost of current additions or on cost projections of near term future additions. In no case has Bell employed the embedded cost of facilities added to the system prior to about 1973.

Such a costing approach might be fully appropriate if Bell were analyzing only new additions to its services, as for example, the cost of a new competitive service or of a serivce which only marginally affects the rate of growth of the overall system. In the present case,

however, Bell is attempting to measure the cost effect not of additions, but major contractions in service, not of peripheral competitive services, but of virtually the entire range of services[1] which the System provides. Specifically, Bell is attempting to measure a contraction of about 200 million MTS messages and 1700 WATS lines.[1] It should also be attempting to measure proportionate—if not greater—contractions in its private line offerings, but as discussed above, it has inexplicably ignored all price elasticities for these services.

The incremental cost effects of major contractions in service may take three forms. First, if there is a strong secular, i.e., independent growth trend, the contraction in demand resulting from a rate increase may merely slow that rate of growth from that which would have been experienced had the rate increase never been imposed. Second, there may be an acceleration of the retirement schedule of old, usually obsolescent equipment. Third, there may be abandonment of some equipment which is dedicated, by reason of either location or special design, to customers who will repress or divert demand in order to escape the rate increase.

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[1] The principal exception in video (Series 7000) which accounts for about one percent of Bell's net investment on a Method 7 allocation basis.

[2] Traffic and Revenue Data, Volume 1, page 6.

Bell has chosen to reflect only the first of these three effects in its cost study. The propriety of this treatment depends upon the presence and strength of a strong secular growth trend. Although Bell's estimates of service volumes during the forecast period suggest a rate of independent growth of approximately 15 percent annually between 1975 and 1977, the discussion above has revealed that the economic indicators used to project this rate of growth are overly optimistic in light of recent economic developments.

Bell has totally ignored the other two effects, that of accelerating the retirement of obsolescent facilities and forcing the abandonment of dedicated plant and equipment. Of these two effects, the latter would apply primarily to the private line services, for which Bell has unreasonably assumed no price-elastic contraction in demand. Prior Bell studies have indicated that about 60 percent of private line telegraph costs, five percent of private line telephone costs, and 16 percent of TELPAK costs relate to non-fungible plant, that is, discrete facilities which could not be reassigned to other services if the current demand for them by their present users were to disappear.[1] Since abandonment of such facilities would, in effect, involve a capital write-off, the absence of any reflection of this cost effect may constitute a major understatement of the cost to Bell of imposing these rate increases.

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[1] FCC Docket No. 18128, Bell Exhibit 22B, pages 012, 022, 031 and 040.

More significant, however, would be the error which could result if the contractions in demand created by Bell's rate increases triggered a major acceleration of the retirement of obsolescent facilities. The record of FCC Docket No. 18128 suggests that this error could have a significant influence on the rate of return which Bell will experience during the forecast period. Data provided by Bell in that proceeding revealed that the book cost of obsolescent line haul transmission plant was then (1969) greater than the cost of the new replacement facilities, even on a net investment basis.

1969 Bell System Investment Costs[1]

		Per Circuit Mile		Per Carrier Terminal	
		Gross	Net	Gross	Net
Short and Intermediate-Haul					
Obsolescent:	Open Wire	$150.77	$ 78.55	$4,500.00	$1,913.00
	Voice Frequency Cable	200.36	135.33	--	--
Replacement:	N Carrier	38.15	28.76	1,250.00	950.00
Line-Haul					
Obsolescent:	K Carrier	36.55	15.93	1,400,00	595.00
Replacement:	Coaxial Cable	17.74	14.70	1,050.00	842.00
	Radio Relay	10.75	8.32	1,025.00	822.00

[1] Airlines Rebuttal Exhibit 1, page 5.

To the extent that Bell has substituted the cost of new facilities as a measure of incremental effect of price-elastic service contractions when instead the effect would be to hasten the retirement of high cost, obsolescent facilities, it has understated the cost savings resulting from its rate proposals. As a consequence, it has overstated its rate of return during the forecast period. Because of these retirements, the actual rate of return may exceed th 10.75 forecast for 1975.

APPENDIX B

ANALYSIS BY CHARLES W. KING
OF SPECIFIC DEFICIENCIES IN AT&T'S TARIFF FILING
OF JANUARY 8, 1975 WITH RESPECT TO TELPAK (SERIES 5000) SERVICE

Paragraph (d) of Section 61.38 of the Commission's Rules spells out more stringent requirements for material to be submitted in connection with major rate increase filings. For filings covered by this paragraph, "the filing carrier shall submit all cost, market and other data on which it relies in justification of the rate increase and in an appropriate form to serve as the carrier's direct case in the event the rate increase is set for hearings..." The content of the material which must be offered in evidence in common carrier hearing proceedings is in turn spelled out in Section 1.363 (b)[1] of the Commission rules:

> "There shall be a clear statement of the facts and judgments upon which conclusions are based and a statement of the relative weight given to the various factors in and arriving at each conclusion together with an indication of the alternative courses of action considered."

The Commission has specifically provided that failure to comply with any provision of Section 61 would be grounds for rejecting the tariff material filed by the carrier.[2]

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[1] 47 C.F.R. Sec 1.363.

[2] 47 C.F.R. Sec 61.39.

1. Bell has submitted no facts or judgments upon which it concludes that the competitive cost of private microwave systems, against which TELPAK is designed to compete, will permit a 7.8 percent increase in TELPAK rates.

The facts and judgments which Bell has presented as the basis for its conclusion that it is entitled to rate relief all relate to the general requirement of the Bell System to maintain its ability to attract capital in order to support future construction. In effect, the across-the-board nature of the rate increase proposals implies that the level of rates for each service is based solely upon such overall considerations. In other words, Bell has assumed that it need only to demonstrate that there is a requirement for an improvement in aggregate rate of return in order to justify an increase in the rate levels of seven out of eight of its major interstate service categories. Except where there has been a restructuring of rates, as with MTS and WATS, Bell has offered no justification for the rate increases imposed on individual services.

Such an approach might be appropriate for the services which are offered in largely monopoly markets. The rate levels of the competitive services, however, are based on economic factors other than the aggregate revenue need. Most important of these economic factors are the costs and characteristics of the competition which the service is designed to meet. For such competitive services, a minimum response to Section 61.38 (d) would be a statement of the facts and

judgments upon which Bell relies in ignoring these competitive factors.

The TELPAK service (Series 5000) was offered initially in 1961 specifically in response to the Commission's determination in the Above 890 Mc Case that its rules should be liberalized so as to permit private enterprises to construct and operate their own private microwave systems without regard to the availability of common carrier communication services and facilities.[1] At the time of that initial filing, the Commission instituted Docket No. 14251 as an investigation into the lawfulness of the classifications, regulations and practices in AT&T's TELPAK tariff. Following hearings, the Commission issued a tentative decision which included the following conclusion:[2]

> "(d) There is apparent justification for TELPAK C and D classifications in terms of meeting competition from private microwave systems having channel capacities comparable to those offered by such TELPAK classifications. However, we are unable to determine on this record that the rates for TELPAK C and D classifications are compensatory in relation to the cost of furnishing the services offered thereunder, and, therefore, are unable to find that the other users of A.T.&T. services will benefit and not be burdened by the application of such rates."

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[1] Report and Order, Allocation in Frequencies in Bands Above 890 Mcs, Docket No. 11866, 27 FCC 359 (1959), Reconsideration Substantially Denied, 29 FCC 825 (1960).

[2] 38 FCC 370, 395 (1964).

Subsequently, the Commission adopted this conclusion.[1] In effect, it stated that the only remaining issue with respect to TELPAK C and D was whether the rates were compensatory.[2] That issue was examined in FCC Docket No. 16258, AT&T General Rate Investigation and in Docket No. 18128, TELPAK Private Line Rate case. It still awaits final resolution. The proposition that TELPAK was required by and designed in response to the competition of private microwave systems has not been challenged in any of the proceedings since the conclusion of FCC Docket No. 14251. Thus, insofar as TELPAK is concerned, the regulatory issue has been the minimum level of rates needed to be compensatory. Throughout its history, it has been understood that the maximum level of rates is determined by the competitive costs of privately constructed microwave systems.

Although the rate level of TELPAK presumably reflects the competitive cost of private microwave systems, Bell's filing contains not a single reference to this primary rate making factor. Indeed, Bell has made no allowance whatever for any price elasticity in the demand for TELPAK service. Yet the evidence submitted by Bell in FCC Docket No. 18128 suggests that there are strong

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[1] Memorandum Opinion and Order, Telpak Case, Docket No. 14251, 37 F.C.C. 1111 (1964), Reconsideration Denied, 38 F.C.C. 761 (1965).

[2] Id. 37 F.C.C. at 1118.

elasticities of demand in the range of TELPAK's present rate level. In that proceeding, Bell studied the market response to four different test rate levels. In ascending order they were:

Test rate 2 — The rates in effect prior to September 1968.

Base rates — The rates in effect between September 1968 and February 1970.

Test rate 3 — The rates in effect from February 1970 to May 1972.

Test rate 4 — A hypothetical rate schedule roughly 25 percent higher than test rate 3.

The details of these test rates are shown on the following page. Bell's analysis of the TELPAK market indicated that demand would be only marginally inhibited up to the level of test rate 3; above that test rate the market would become highly elastic. Specifically, the imposition of test rate 4 would cause a contraction of 36.5 percent in TELPAK telephone channel miles and 52.4 percent in TELPAK telegraph channel miles.[1] Much of this contraction stemmed from the predicted abandonment of the Bell System by the airline industry in favor of an industry owned and operated communications system.[2]

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[1] FCC Docket No. 18128, Appendix to Bell Exhibit 1, page 4-1.

[2] Id., page 10-1.

Interstate Private Line Market Study

	Rates in Effect Mid-1969[a]	Test Rate Schedules 2[b]	3[c]	4
TELPAK				
IXC/MILE	$ 28	$ 25	$ 30	$ 40
C	60	45	85	115
D				
Svc. Terms & Conn. Argts.				
TPH & TTY	25	15	35[d]	40
Wideband	425	300	425	500
Multiway sw. argt.				
Line	150	100	150	175
Trunk	230	175	230	275
Additional Service Terminals	10	5	15	17.50
Additional Service Terminals for Use as a Wideband Channel	300	195	300	350
Tgh. Equiv.	6/1	12/1	2/1	2/1
150 Baud	3/1	4/1	2/1	2/1

Source: FCC Docket No. 18128, Bell Exhibit 1, Appendix, page 1-1.

[a]Rate schedule in effect from September 1, 1968 to February 1, 1970.

[b]Rate schedule in effect prior to September 1, 1968.

[c]Rate schedule in effect after February I, 1970.

[d]Increased to $40 on May 4, 1972.

Test rate 3 was adopted as the rate level for TELPAK on February 1, 1970. In May of 1972, Bell imposed yet another increase in TELPAK rates, this one involving a 14 percent increase in terminal charges and a 150 percent increase in installation charges.[1] As a consequence, TELPAK rates are now between test rate 3 and 4 and therefore in the range of rates which Bell identified as being most susceptible to diversion to private microwave.

In fact, the potential for diversion is probably significantly greater than even Bell estimated. In the first place, Bell's market study in FCC Docket No. 18128 ignored the possibility of a number of industry-shared microwave systems in the non-transportation industries. The Commission's decision in the Cooperative Sharing of Operational Fixed Stations case, FCC Docket No. 16218,[2] permits any group of users engaged in the same line of business to construct jointly and to share private microwave systems, provided such joint use and/or sharing is on a non-profit basis. The aerospace industries, for example, indicated on several occasions their willingness to adopt this communications alternative if Bell System charges became excessively high. This fact was known to the AT&T account

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[1] Transmittal No. 11334, Bell Exhibit T2, page 3, December 6, 1971.

[2] FCC 66-64, 4FCC 2d 406 (1966), Reconsideration Denied FCC 67-321, 7FCC 2d 263 (1967).

managers who conducted the market study in Docket No. 18128 and was specifically mentioned in the reports of at least two of them.[1] Yet because AT&T's market study had no procedure for an industry wide—as opposed to company by company—review of private microwave alternatives (other than the transportation industries), this important competitive factor was never considered.

Furthermore, the account managers, upon whom Bell relied for most of its estimates of private microwave diversion, were initially given no guidelines as to the cost of private microwave construction or operation. Indeed, one aerospace account manager was unaware that non-Bell competitive alternatives were even under consideration.[2] The account managers were verbally informed that if they wished data on the cost of private microwave, they should indicate this to the AT&T headquarters staff.[3] Even when the account managers made such inquiries, the cost guideline[4] they received was well above AT&T's own later estimates of microwave costs for most of the TELPAK market.[5]

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[1] FCC Docket No. 18128, Airlines Exhibit 1, pages 53 and 54.

[2] FCC Docket No. 18128, Tr. Volume 7, pages 633-634.

[3] FCC Docket No. 18128, Tr. Volume 3, page 187.

[4] FCC Docket No. 18128, Tr. Volume 3, page 189.

[5] FCC Docket No. 18128, Bell Exhibit 1, page 34.

Since the time of this rather unsatisfactory survey of TELPAK's market environment, the competition for private line communications service has increased considerably. This trend was acknowledged by Francis Woods, Bell's witness at the time of its December 1971 rate filing.[1]

> "Our 1969 analyses were focused primarily on the possibility of competition from privately owned microwave systems. Since that time additional competitive factors have emerged, including...the adoption of a Commission policy in Docket No. 18920 permitting general licensing of specialized common carriers and the actual implementation of such policy. In the next several years satellite communications may also become significant in domestic intercity communications. In these circumstances greater changes in rate levels for the private line services should not be made without further study and evaluation and resolution of some of the uncertainties. Such evaluation is important to give reasonable assurance that further increases in rate levels will not result in significant losses in market quantities and a greater decrease in revenues than in costs, with a reduced rather than increased contribution to overall earnings."

Apparently, Bell has not taken Mr. Woods' advice. It is now proposing "greater changes in rate levels for the private line services" with no evidence of further study and evaluation "to give reasonable assurance that further increases in rate levels will not result in significant losses in market quantities and a greater decrease in revenues than in costs." It is proposing these rate

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[1] FCC Docket No. 18128, Bell Exhibit 21, page 8.

increases in spite of the fact that the two new competitive factors which Mr. Woods mentioned—specialized common carriers and domestic satellites—have both become realities. If anything, these subsequent developments suggest that Bell should revise its TELPAK rates in the opposite downward direction from that proposed.

The present filing makes no reference whatever to the original determinant of TELPAK's rate level, the cost of competitive private microwave, nor to other important competitive factors which have evolved in recent years. It has assumed no elasticities whatever in the demand for TELPAK service. It has made that assumption even though its own previous market studies show that TELPAK is now in the range of highly demand-elastic rates, even though the record reveals that Bell's studies probably understated the true extent of that elasticity, and even though the range of competitive alternatives has increased significantly since the time those studies were made.

2. Bell has submitted no facts or judgments upon which it concludes that the rates for the TELPAK service are non-compensatory and require an increase.

In the past, the only justification which Bell has offered for raising rates without regard to private microwave competition is alleged improvement in the "revenue-cost relationship". From the original Telpak docket, the compensativeness of TELPAK was and is the sole remaining issue[1], and in one form or another it has been used by Bell as the alleged justification for a series of rate increases which have had a staggering financial impact on major users of TELPAK such as the airline and aerospace industries.

Between September 1968 and May 1972, the TELPAK D base capacity charge increased 90 percent, the TELPAK C base capacity charge increased 20 percent, and the TELPAK terminal charge increased 167 percent. Telegraph-to-telephone equivalency dropped from 12 to 1 to 2 to 1 and installation charges increased by 150 percent. In each case, these rate increases were defended by Bell as being necessary to improve "the revenue-cost relationship" of the TELPAK offering.[2] The most recent rate increases, those of February 1, 1970 and May 4, 1972,

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[1] Memorandum Opinion and Order, TELPAK Case, Docket No. 14251, 37 F.C.C. 1111, 1118 (1964).

[2] E.g., Transmittal No. 11334 (December 6, 1971), Bell Exhibit F-2, page 3.

were supported by "Burden Studies" which purported to show the net contribution or burden of TELPAK to the overall Bell System.[1]

In this filing, Bell has submitted no data whatever relative to the contribution or burden of TELPAK or to its compensativeness. Yet such data are necessary if Bell is to justify a further rate increase in contravention of the very extensive evidence that, at its present rates, TELPAK is in danger of failing in its original mission which is to retain the patronage of bulk communications users who are in a position to construct their own communications systems. The most recent evidence suggests that if such data were submitted they would not support the present rate increase proposal. As part of the support material for its May 1972 increases, Bell performed a "burden analysis" designed to measure "whether or not the continued provision of the service in question (i.e., TELPAK) causes users of other services of the company to pay any more than would be the case if the service being tested were not offered."[2] This study indicated that at the rates then being filed (which are still in effect) TELPAK contributes approximately $10 million annually[3] to other users of the Bell System.

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[1] FCC Docket No. 18128, Bell Exhibits 5A and 21.

[2] FCC Docket No. 18128, Bell Exhibit 21, page 14.

[3] Id., page 15.

According to Bell's own economic expert, Professor James C. Baumol, the burden analysis does not measure whether a service is compensatory.[1] Indeed, by Dr. Baumol's definition of compensativeness, TELPAK was compensatory at the interim rates of September 1968 (as measured by Bell's own costs).[2] Nevertheless, even if, arguendo, the burden test were accepted as the most stringent possible measure of the minimum level of rates, it is apparent from the results of the most recent application of this test to TELPAK that a new analysis probably could not justify the increase in TELPAK rates proposed in this filing. This conclusion cannot be verified, of course, because Bell has submitted no burden study or other cost data by which it can determine the prospective contribution or compensatory status of the TELPAK offering.

The only materials accompanying the tariff filing which might conceivably be considered as disclosing the relative profitability of TELPAK are the results of a "cost of service study" contained in Tab 5 of the Cost Data Volume 1. This material reflects a fully distributed cost concept which AT&T and most user parties (including ATA)[2a] disavow. Indeed, AT&T witnesses have repeatedly denied that fully distirbuted cost studies can be used to reach any conclusion

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[1] FCC Docket No. 18128, Tr. Volume 22, page 1989.

[2] FCC Docket No. 18128, Airlines Exhibit 1, Appendix B.

[2a] Except Method 7 of FDC for certain limited purposes. (See FCC Docket No. 19128, Proposed Findings, Airline Industry Parties, pp. 159-161).

as to relative revenue need among Bell System services.[1] But even were the studies so used, they would not support AT&T's conclusion that TELPAK, in particular, should be burdened with further rate increases. Of the four methods of allocating costs, three indicate that the rate of return on TELPAK investment, even before the proposed rate increases, exceeds that of the aggregate of Bell System interstate services. These three methods include Method 7, the one which an AT&T witness has stated most closely approaches a measure of historical cost responsibility.[2] Under that method, TELPAK yields a rate of return of 12.2 percent before the rate increase.[3] Not only is this rate higher than the 8.7 percent return from all Bell System interstate services, but it is higher than the 10.75 percent overall return requested by Bell in this filing.

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[1] E.g., FCC Docket No. 18128, Bell Exhibit 21, page 16.

[2] FCC Docket No. 18128, Tr. Volume 102, page 9738.

[3] Cost Data Volume 1, page 15. Under Methods 1, 2, and 6, the TELPAK earnings ratios are 8.2%, 9.5% and 12.9%, respectively.

3. Bell has submitted no facts or judgments upon which it bases its apparent conclusion that TELPAK, unlike video, should be treated as though it were a monopoly service for purposes of this rate increase.

The flimsiest of all possible justifications for the proposed increase in TELPAK rates is the one that Bell has apparently adopted, that TELPAK should be given the same across-the-board increase as Bell's monopoly and its other private line services. Not only does this reasoning defy the economic logic of the competitive TELPAK offering—as discussed above—but it violates any basic concept of equity as among the users of Bell's various services. It callously ignores the staggering rate increases sustained by TELPAK users during a time when MTS users were enjoying repeated rate reductions. Message telephone rates were reduced in 1958, 1963, 1965, 1967, 1968, and 1969.[1] On those occasions Bell did not consider TELPAK as another monopoly service to receive uniform rate treatment. The only rate increase that MTS has sustained in the last 20 years were two rather small increases in 1971 and 1972. As shown in Attachment D to Bell Statement 1, the interstate rate index is still well below its level of the 1950's. Thus, from the standpoint of both economics and equity, there is no justification for assigning to TELPAK substantially the same rate increases as are imposed on Bell's monopoly services and its less competitive private line services.

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[1] FCC Docket No. 18128, Bell Exhibit 21, page 11.

Properly, TELPAK should be treated separately on the basis of its particular competitive characteristics in the same manner as Bell has treated its other major competitive service, video. Late in 1971, it became obvious to Bell that the rates which it was then charging for full time video service were well above the competitive rates being offered by a number of new "miscellaneous common carriers".[1] Failure to respond to this competition would have resulted in major inroads into Bell's video service to the point where they might significantly impair the economic viability of the remaining portion of the service.[2] In response to this threatened competition, Bell filed (October 1972) major reductions in its full time video rates.[3] These competitive video rates have remained in effect and are now exempted from the current rate increase.[4] That exemption, which is directly traceable to competitive cost factors, has been made in spite of the fact that all four of the fully distributed cost allocation methodologies in Bell's August 1973-August 1974 cost of service study indicate that the ratio of net operating earnings to net investment is significantly lower for video service than for the overall Bell interstate system.[5]

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[1] FCC Docket No. 18684, Bell Exhibit P-11.

[2] Id. pages 5-6.

[3] FCC Docket No. 18684, Proposed Findings of the Bell System, page 362.

[4] Bell Statement 6, page 26.

[5] Cost Data Volume 1, page 015. Earnings ratios for television are 2.0%, 2.2%, 4.9%, and 4.4%, under FDC Methods 1, 2, 6 and 7, respectively, as against the overall earnings ratio of 8.7%.

Bell has offered no explanation as why it should defer to competition with respect to video service and not with respect to TELPAK. To the contrary, the explanatory material accompanying this rate filing suggests that Bell never considered the matter. Yet the very extensive evidence contained in the record of FCC Docket No. 18128 concerning the relative desirability of competitive alternatives to the Bell System for bulk users indicates that Bell's apparent indifference to this issue could result in the loss of substantial volumes of service and the revenue contribution which they provide. Clearly, it is critical to the continued economic viability of TELPAK service that Bell take its own earlier advice and reexamine the competitive environment in which it operates before proposing any further rate increases for this service.

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE & TELEGRAPH COMPANY, Long Lines Department	)	Transmittal No. 12241
Revision of Tariff F.C.C. No. 260, Series 6000 Channels	)	

To: The Chief, Common Carrier Bureau

PETITION TO EXTEND NOTICE PERIOD

The American Broadcasting Companies, Inc., CBS INC., and National Broadcasting Company, Inc. (the "Network Companies"), by their attorneys, respectfully petition that the Chief, Common Carrier Bureau, pursuant to Section 203 of the Communications Act of 1934, as amended (47 U.S.C. 203) and Section 0.297 of the Commission's Rules and Regulations, delay the effective date of the proposed revisions of American Telephone & Telegraph Company (hereinafter "AT&T") Tariff F.C.C. No. 260, filed on January 3, 1975, Transmittal No. 12241, by extending the notice period for an additional 90 days as provided by Section 203 of the Communications Act, unless there is a voluntary extension of this nature by the carrier. 1/

1/ Being filed concurrently herewith is a Petition to Suspend, Designate For Hearing and Impose Accounting Condition, which seeks suspension of the tariff filing pursuant to Section 204 of the Act. Action granting this Petition to Extend Notice Period would, of course, render the Petition to Suspend moot at this time.

Preliminary Statement

1. The Petitioners -- ABC, CBS and NBC -- each operate companies which provide public affairs, news and entertainment programming by radio networking. These networks are among the principal purchasers of the 6000 series facilities provided by AT&T for program transmission purposes. It is primarily through the use of such facilities that Petitioners provide radio program material to affiliated radio stations. In view of these and the following facts, the Network Companies each are parties having a direct and substantial interest in the proposed rate changes involved here.

2. Section 0.297 of the Commission's Rules delegates to the Chief of the Common Carrier Bureau authority to act

> "upon all matters arising in connection with the administration of tariff regulations promulgated by the Commission pursuant to Section 203 of the Communications Act, and, in connection with the administration of that section insofar as it relates to the modification of requirements thereof or made pursuant thereto, as authorized in particular instances by subsection (b) thereof..."

Consequently, this petition is properly directed to the Chief, Common Carrier Bureau.

3. On January 3, 1975, tariff revisions were filed by the American Telephone and Telegraph Company -- Transmittal No. 12241 -- which included proposed increases in the rates for all of AT&T's interstate services (except series 7000--television), including the message toll, WATS, private line telephone and telegraph, Telpak and audio services. Although proposing substantial revisions in the rate structure for the principal message toll services, changes in the rates for the various private line services are being made on the basis of a mechanistic across-the-board approach. As stated by AT&T:

> "For the private line services, we are generally applying the same percentage increase to most private line rate elements. That is, the rate elements, including any non-recurring charges, have been adjusted uniformly by the same percentage increase . . . ." (Bell Statement 6, page 2)

Thus, the audio (series 6000 channels) and other private line rate elements have been increased mechanistically by application of a flat 7.8% increase in charges[1/] irrespective

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1/ See Summary of Rate Changes, page 10, accompanying AT&T Transmittal No. 12241.

of customer benefit, or other cost, market or public interest considerations related to specific services.

4. In view of this procedure, the substantial impact which the proposed rate increases will have on the radio networks and are likely to have upon other radio broadcast customers, and the overwhelming volume of data filed by AT&T in support of its proposal which must be reviewed by interested parties, the notice period should be extended for an additional 90 days as provided by Section 203 of the Communications Act.

The Proposed Changes In
Audio Rates Are Likely To Have
A Major Impact On Radio Networking

5. The proposed increase in charges for audio services to which this petition is directed are neither minor nor inconsequential. They are likely to have a major impact upon the radio broadcasting industry and the public interest in radio broadcasting. Under the proposed rate revisions, the overall revenues paid to AT&T by the radio broadcasting industry would immediately be increased by approximately $1.7 million annually to in excess of $23 million.[1/] The foreseeable overall impact will be an additional rate burden upon individual radio broadcast stations as well as on the radio networks.[2/]

1/ This figure is projected on the following basis: current revenues received by AT&T from the audio services total $21.59 million (Volume 4 - Cost Data, submitted with AT&T's January 3 filing); application of the 7.8% across-the-board increase (without market restriction) adds another $1.7 million annually.

2/ The latest FCC published financial data for AM and FM radio in the year 1973 has just been released. See FCC News Release, January 17, 1975, Mimeo 44867.

No Justification Has Been
Shown For Application Of An
Across-the-Board Increase in Rates

6. As explained above, AT&T seeks additional revenues from the audio services -- as well as other private line services -- by levying a flat 7.8% across-the-board increase in rates for these services. Yet, other than general commentary on the state of current economic conditions, AT&T offers no justification for such increases in charges for the radio services.

7. The purpose of the rate revisions, as stated, is merely "to achieve the same proportionate increase in the revenue levels for those services as that derived from MTS."[1/] But, this is not a justification for an increase in charges for a particular service category -- it is only a stated intention. AT&T does not demonstrate, for example, precisely how the purported increase in the cost of debt and equity capital -- one of the reasons why Bell now seeks a higher rate of return -- impacts on the audio services. Indeed,

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1/ Letter from James R. Billingsley, AT&T Vice President, to Chairman Richard E. Wiley, dated January 3, 1975, page 5.

the need for additional capital to satisfy long-term construction requirements is the principal reason given for the proposed rate increases. However, this may have no relation to the audio program transmission services which, we understand, have been relatively stable in size in recent years.[1/] Why then should the audio services bear an increase in rates based upon the purported need for additional capital to finance construction and expansion of other plant and services? Certainly it should not where no showing has been made -- as is the case here -- that relates to the particular service category in question.

8. There is, in addition, serious question whether an across-the-board increase in rates for all service categories, irrespective of cost and market conditions affecting particular services, is unlawful and violative of the Act. See, e.g., American Trucking Association, Inc. v. F.C.C., 126 U.S. App. D.C. 236, 377 F.2d 121 (1966), cert. den. 386 U.S. 943 (1967).

1/ AT&T has recently indicated that the entire $4 billion originally sought for its construction program (Billingsley letter, page 2), may no longer be required. The New York Times (January 16, 1975; page 57) reports a recent announcement by John DeButts, AT&T Board Chairman, that new money requirements for 1975 would be about $3.3 billion -- almost $1 billion less than originally anticipated.

The Commission Should Extend the Notice Period For An Additional Ninety Days

9. The essence of the situation now confronting the Commission appears to be as follows. The questions presented are difficult ones. The carrier asserts that the proposed rate increases for audio services are warranted by recent changes in general economic conditions. The broadcast user interests assert that the carrier's case, based upon inadequate and insufficient data, at least fails to reflect applicable public policy considerations. The ultimate answers to the difficult questions presented will not be known until there has been an appropriate Commission inquiry into these matters. But meanwhile the Commission must make some determination concerning whether the proposed new rates -- included in a package constituting the largest single rate filing in AT&T's history -- should be permitted to become effective at this time.

10. In a determination whether at this stage to resolve doubts and uncertainties in favor of the carrier or in favor of the users it is critical for the Commission to recognize that the burden of proof is imposed upon the carrier by statute (Section 204) "to show that the

increased charge, or proposed increased charge is just and reasonable . . .". As we indicate above, the tariff on its face as it relates to the audio service category raises questions in so many vital respects that it cannot be said to constitute even a persuasive threshold showing in support of the carrier position. Nevertheless, the imposition of the tariff revisions may require substantial changes in industry practice and force the industry to undergo adjustments which would in turn be affected by the outcome of a hearing likely to be adverse to the carrier. Under such conditions the doubts should not be resolved in favor of the carrier, and the effective date of the tariff revisions should be extended to enable the Commission and the public some minimal additional time in which to review the rate revisions being proposed and their likely impact.

11. This period will, at the very least, be needed both for the necessary adjustments in network-affiliate relationships, business and financial planning, and other areas of the industry within which adjustments must be made. Appropriate technical, budget and financial, and operational analysis of the proposed changes, by both networks and individual stations, must underly such necessary adjustments. They must also provide the basis

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1/ In this respect it should be noted that in terms of relative impact allowing the proposed rates to go into effect would have a major impact upon the radio broadcast industry. Delaying the effectiveness of such rates would have only the most minimal effect upon AT&T which seeks revenues of some $700 million.

on which interested parties may submit to the Commission such additional positions as appear to be warranted. As we indicated herein, such an opportunity is essential; it cannot be presumed that the methods, analyses and assumptions upon which AT&T has proceeded are valid or free of error.[1/]

12. We do not argue that AT&T should not be permitted to charge proper rates and realize an appropriate return. But the facts here strongly underscore the need to review carefully the proposed drastic rate changes and increases before they are permitted to become effective.

The Commission Has The Authority To Grant The Extended Notice Period Requested

13. The Network Companies believe that the Commission has the authority to extend the statutory notice period for tariff filings for the additional ninety day period requested herein. Section 203(b) of the Communications Act provides:

> "No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public . . .; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions."

1/ The Baltimore & Ohio R. Co. v. Aberdeen & Rockfish R. Co., 393 U.S. 97 (1968).

In recently adopting[1/] section 61.58 of its Rules and Regulations, the Commission "modified" the requirements of Section 203(b) of the Act "by a general order applicable to special circumstances," i.e., in those situations where rate increases were being proposed by carriers, 60 days notice to the public was required rather than 30, as had been the case previously.

14. In upholding the Commission's authority to so modify the statutory requirements of Section 203(b), the United States Court of Appeals for the Second Circuit, in American Telephone and Telegraph Company v. FCC, 503 F.2d 612, 615 (1974), stated:

> "As we noted initially, Section 203(b) clearly provides that the FCC has the power to 'modify' the notice requirement. AT&T concedes this but argues that the word 'modify' can only mean reduce and cannot be interpreted to mean enlarge. The FCC and the intervenors urge that to modify means to change or to alter whether or not this results in an increase or decrease in the notice period. . . [W]e are persuaded that to 'modify' means to alter or to change whether this involves enlargement or reduction. Black's Law Dictionary 1155 (4th ed. 1951) so defines the word and this is the normal meaning which lawyers and judges attribute to the term. Certainly, to modify an opinion or an order, is not necessarily to reduce it but simply to change it, irrespective of any quantitative result." (footnotes omitted)

1/ 35 F.R. 16255, October 16, 1970.

15. Similarly, the Commission thus has the authority to "modify" the requirements of Section 203(b) by extending the notice period "in particular instances" as well as by general order as it did in the case of Rule 61.58.

16. And this, we submit, is just such an instance where the Commission should exercise its discretion and extend the notice period for an additional 90 days. As the court stated in AT&T v. FCC, supra, at 615-616:

> "Thus, even assuming that AT&T is correct in its position that to modify means to relax, to reduce or to temper, the change effectuated here does just that. By increasing the notice period from 30 days to 60 days, the Commission is providing more time for the public to file objections to, and for itself to evaluate, new tariffs. It is thus easing the strictures of the present rule; it is relaxing its requirements just as the NLRB did in Monsanto. In sum, an extension of time may well constitute a reduction or easing of the requirements of the regulation. While this is obviously not in the economic interest of the petitioner, the prime responsibility of the agency is to the public and not to the protected monopolist. See GTE Serv. Corp. v. FCC, 474 F.2d 724, 730-32 (2d Cir. 1973)."

It is difficult to imagine a more propitious time for the exercise of agency authority in this area. The instant tariff filing involves some $700 million in additional revenues -- it is the single largest in AT&T's history and it reaches into every facet of American life. Surely,

in these circumstances, three months additional time during which the Commission and the public may evaluate and adjust to the massive increase in rates is not unreasonable.

Conclusion

The above matters considered, the Network Companies respectfully submit that the requested relief is appropriate and should be ordered by the Commission in the exercise of its regulatory responsibilities. Wherefore, it is requested that the Commission extend the statutory notice period for an additional 90 days as provided by Section 203 of the Act.

Respectfully submitted,

AMERICAN BROADCASTING COMPANIES, INC.
CBS INC.
NATIONAL BROADCASTING COMPANY, INC.

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January 28, 1975

Their Attorneys

BEFORE THE

[illegible] Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE & TELEGRAPH COMPANY, Long Lines Department	)	Transmittal No. 12241
Revision of Tariff F.C.C. No. 260, Series 6000 Channels	)	
	)	

To: The Commission

PETITION TO SUSPEND, DESIGNATE FOR HEARING AND IMPOSE ACCOUNTING CONDITION

The American Broadcasting Companies, Inc., CBS INC. and National Broadcasting Company, Inc. (the "Network Companies"), by their attorneys, respectfully petition[1/] that the Commission, pursuant to Section 204 of the Communications Act of 1934, as amended (47 U.S.C. 204):

(a) Designate for hearing the question of the lawfulness and reasonableness of the proposed tariff revisions of American Telephone & Telegraph Company (hereinafter "AT&T") Tariff F.C.C. No. 260, filed on January 3, 1975, Transmittal No. 12241, insofar as said filing propose changes in the charges for Series 6000 interexchange and local channels and station connections;

1/ Being filed concurrently herewith is a Petition to Extend Notice Period, which seeks an additional 90 days delay in the effective date of the tariff filing pursuant to Section 203 of the Act. This Petition to Suspend would become moot at this time with favorable action upon the "Petition to Extend Notice Period."

(b) suspend the said revisions; and

(c) impose an accounting condition as provided in Section 204 of the Communications Act.

Preliminary Statement

1. The Petitioners -- ABC, CBS and NBC -- each operate companies which provide public affairs, news and entertainment programming by radio networking. These networks are among the principal purchasers of the 6000 series facilities provided by AT&T for program transmission purposes. It is primarily through the use of such facilities that Petitioners provide radio program material to affiliated radio stations. In view of these and the following facts, the Network Companies each are parties having a direct and substantial interest in the proposed rate changes involved here.

2. Section 1.773 of the Commission's Rules and Regulations requires that a petition to suspend proposed rate increases be filed with the Commission and served upon the Common Carrier Bureau and the publishing carrier "at least 35 days before the effective date of the tariff schedule." The tariff revisions to which this petition is

directed are to become effective March 4, 1975. Consequently, this petition is timely filed in accordance with Rule 1.773.

3. On January 3, 1975, tariff revisions were filed by the American Telephone and Telegraph Company -- Transmittal No. 12241 -- which included proposed increases in the rates for all of AT&T's interstate services (except series 7000--television), including the message toll, WATS, private line telephone and telegraph, Telpak and audio services. Although proposing substantial revisions in the rate structure for the principal message toll services, changes in the rates for the various private line services are being made on the basis of a mechanistic across-the-board approach. As stated by AT&T:

> "For the private line services, we are generally applying the same percentage increase to most private line rate elements. That is, the rate elements, including any non-recurring charges, have been adjusted uniformly by the same percentage increase . . . ." (Bell Statement 6, page 2)

Thus, the audio (series 6000 channels) and other private line rate elements have been increased mechanistically by application of a flat 7.8% increase in charges[1/] irrespective

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1/ See Summary of Rate Changes, page 10, accompanying AT&T Transmittal No. 12241.

of customer impact, or other cost, market or public interest considerations related to specific services.

4. In view of this procedure and the substantial impact which the proposed rate increases will have on the radio networks and are likely to have upon other radio broadcast customers, the effective date should be suspended for the maximum stated statutory period as provided by Section 204 of the Communications Act.

The Proposed Changes In
Audio Rates Are Likely To Have
A Major Impact On Radio Networking

5. The proposed increase in charges for audio services to which this petition is directed are neither minor nor inconsequential. They are likely to have a major impact upon the radio broadcasting industry and the public interest in radio broadcasting. Under the proposed rate revisions, the overall revenues paid to AT&T by the radio broadcasting industry would immediately be increased by approximately $1.7 million annually to in excess of $23 million.[1/] The foreseeable overall impact will be an additional rate burden upon individual radio broadcast stations as well as on the radio networks.[2/]

1/ This figure is projected on the following basis: current revenues received by AT&T from the audio services total $21.59 million (Volume 4 - Cost Data, submitted with AT&T's January 3 filing); application of the 7.8% across-the-board increase (without market restriction) adds another $1.7 million annually.

2/ The latest FCC published financial data for AM and FM radio in the year 1973 has just been released. See FCC News Release, January 17, 1975, Mimeo 44867.

No Justification Has Been
Shown For Application Of An
Across-the-Board Increase in Rates

6. As explained above, AT&T seeks additional revenues from the audio services -- as well as other private line services -- by levying a flat 7.8% across-the-board increase in rates for these services. Yet, other than general commentary on the state of current economic conditions, AT&T offers no justification for such increases in charges for the radio services.

7. The purpose of the rate revisions, as stated, is merely "to achieve the same proportionate increase in the revenue levels for those services as that derived from MTS."[1/] But, this is not a justification for an increase in charges for a particular service category -- it is only a stated intention. AT&T does not demonstrate, for example, precisely how the purported increase in the cost of debt and equity capital -- one of the reasons why Bell now seeks a higher rate of return -- impacts on the audio services. Indeed,

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1/ Letter from James R. Billingsley, AT&T Vice President, to Chairman Richard E. Wiley, dated January 3, 1975, page 5.

the need for additional capital to satisfy long-term construction requirements is the principal reason given for the proposed rate increases. However, this may have no relation to the audio program transmission services which, we understand, have been relatively stable in size in recent years. 1/ Why then should the audio services bear an increase in rates based upon the purported need for additional capital to finance construction and expansion of other plant and services? Certainly it should not where no showing has been made -- as is the case here -- that relates to the particular service category in question.

8. There is, in addition, serious question whether an across-the-board increase in rates for all service categories, irrespective of cost and market conditions affecting particular services, is unlawful and violative of the Act. See, e.g., American Trucking Association, Inc. v. F.C.C., 126 U.S. App. D.C. 236, 377 F.2d 121 (1966), cert. den. 386 U.S. 943 (1967).

1/ AT&T has recently indicated that the entire $4 billion originally sought for its construction program (Billingsley letter, page 2), may no longer be required. The New York Times (January 16, 1975; page 57) reports a recent announcement by John DeButts, AT&T Chairman, that new money requirements for 1975 would be about $3.3 billion -- almost $1 billion less than originally anticipated.

The Commission Should Suspend
The Tariff Revisions And
Designate Them For Hearing

9. The essence of the situation now confronting the Commission appears to be as follows. The questions presented are difficult ones. The carrier asserts that the proposed rate increases for audio services are warranted by recent changes in general economic conditions. The broadcast user interests assert that the carrier's case, based upon inadequate and insufficient data, at least fails to reflect applicable public policy considerations. The ultimate answers to the difficult questions presented will not be known until there has been an appropriate Commission inquiry into these matters. But meanwhile the Commission must make some determination concerning whether the proposed new rates -- included in a package constituting the largest single rate filing in AT&T's history -- should be permitted to become effective at this time.

10. In a determination whether at this stage to resolve doubts and uncertainties in favor of the carrier or in favor of the users it is critical for the Commission to recognize that the burden of proof is imposed upon the carrier by statute (Section 204) "to show that the

increased charge, or proposed increased charge is just and reasonable . . .". As we indicate above, the tariff on its face as it relates to the audio service category raises questions in so many vital respects that it cannot be said to constitute even a persuasive threshold showing in support of the carrier position. Nevertheless, the imposition of the tariff revisions may require substantial changes in industry practice and force the industry to undergo adjustments which would in turn be affected by the outcome of a hearing likely to be adverse to the carrier. Under such conditions the doubts should not be resolved in favor of the carrier, and the effective date of the tariff revisions should be suspended for the statutory period.[1/]

11. This period will, at the very least, be needed both for the necessary adjustments in network-affiliate relationships, business and financial planning, and other areas of the industry within which adjustments must be made. Appropriate technical, budget and financial, and operational analysis of the proposed changes, by both networks and individual stations, must underly such necessary adjustments. They must also provide the basis

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1/ In this respect it should be noted that in terms of relative impact allowing the proposed rates to go into effect would have a major impact upon the radio broadcast industry. Delaying the effectiveness of such rates pending an investigatory proceeding would have only the most minimal effect upon AT&T which seeks revenues of some $700 million.

on which interested parties may submit to the Commission such additional positions as appear to be warranted. As we indicated herein, such an opportunity is essential; it cannot be presumed that the methods, analyses and assumptions upon which AT&T has proceeded are valid or free of error.[1/] The requested imposition of an "accounting" condition to become effective at the termination of the suspension period, although desirable, provides far less than the relief needed.[2/] Such a condition will not preclude or make possible avoidance of the industry wide changes and adjustments that will flow from the imposition of the new rates with their consequent impact upon the scope and nature of the radio broadcast services available to the people of our country.

12. We do not argue that AT&T should not be permitted to charge proper rates and realize an appropriate return. But the facts here strongly underscore the need to suspend and investigate carefully the proposed drastic rate changes and increases before they are permitted to become effective.

1/ The Baltimore & Ohio R. Co. v. Aberdeen & Rockfish R. Co., 393 U.S. 97 (1968).

2/ See, e.g., FPC v. Hunt, 376 U.S. 515 at 524 (1964); FPC v. Tennessee Gas Transmission Co., 371 U.S. 145 at 155 (1962).

Conclusion

The above matters considered, the Network Companies respectfully submit that the requested relief is appropriate and should be ordered by the Commission in the exercise of its regulatory responsibilities. Wherefore, it is requested that the Commission suspend the tariff filing for the maximum stated statutory period of three months as provided by Section 204 of the Act.

Respectfully submitted,

AMERICAN BROADCASTING COMPANIES, INC.
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January 28, 1975

Their Attorneys

Before the
FEDERAL COMMUNICATIONS COMMISSIO
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
	)	Transmittal No. 12241
Revisions to Tariffs F.C.C. Nos. 259, 260, and 263	)	

To: The Commission

PETITION TO CANCEL OR, IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE

The American Newspaper Publishers Association (ANPA), by its attorneys, hereby petitions the Commission to cancel without an evidentiary hearing the rate increases filed by the American Telephone & Telegraph Company (AT&T) on January 3, 1975, by AT&T Transmittal No. 12241. In the alternative, ANPA petitions the Commission to suspend the rate increases for three months, institute an investigation of the lawfulness thereof, and, if the investigation has not been concluded and an order made within the period of the suspension, require the carrier to keep accurate account of all amounts received by reason of such increases, specifying by whom and in whose behalf such amounts are paid, and upon completion of the investigation and decision require the carrier to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased charges as by its deci-

sion shall be found not justified. In support of this petition ANPA shows the following:

Summary of Position

In essence, AT&T's latest rate proposal is designed to increase its profits on interstate telephone service far beyond the rate of return allowed and declared reasonable by the Commission only two years ago in Docket No. 19129 (38 F.C.C.2d 213 (1972)). The Commission has authority to cancel a tariff filing, such as this one, which is patently contrary to a Commission Order, without an evidentiary hearing. Because of the severe impact of these rate increases on ANPA's member newspapers, and on the public generally, at a time of double digit inflation, and because of the disruptive timing of this filing in relation to other rate proceedings before the Commission, this authority to cancel without hearing should be exercised with regard to this filing. At a minimum, for the above reasons, the filing should be suspended for the maximum statutory period and subjected to a thorough investigation as to its lawfulness.

ANPA's Interest and the Impact on Its Members

The American Newspaper Publishers Association is a non-profit membership corporation comprised of more than 1,100 daily newspapers whose publications represent more than 90% of the total daily and Sunday circulation of news-

papers published in the United States. The ANPA keeps itself and its members fully informed on all communications services used by newspapers, including press communications services and news wire services. In recent years ANPA has participated, on behalf of its members, in numerous FCC rate-making proceedings, including the Private Line Cases (Docket No. 11645), the Press Rate Case (Docket No. 15094), the General Telephone Rate Investigation (Docket No. 16258), the Telpak Sharing Case (Docket No. 17457), the Private Line/Telpak Case (Docket No. 18128), the Hi/Lo Rate Case (Docket No. 19919), and the Resale and Shared Use Investigation (Docket No. 20097). All of these proceedings in one way or another related to the adequacy of leased line facilities and rates for the dissemination of news.

Daily newspapers rely extensively on telephone communications, particularly for the gathering of news information. Interstate message telephone service is perhaps the most important method of transmitting regional news from the scene to editorial headquarters. Such telephone calls by reporters are often made on a collect or credit card basis, and in many cases from telephone booths where operator assistance is required. Moreover, most such long distance telephone calls occur within the region of the newspaper's service area and, therefore, involve relatively short distances. Many newspapers also rely on WATS for news gathering and other opera-

tional needs, and again, service over relatively shorter distances is common. The cost of message telephone service and WATS is a significant element in the operating budget of most daily newspapers.

In addition, daily newspapers, with few exceptions, subscribe to one or more news wire services. The prime source of national and international news coverage for daily newspapers everywhere is one or both of the two principal news wire services, The Associated Press and United Press International. For smaller newspapers located outside of major urban areas, one or both of these news wire services is often the only source of national and international news. Newspapers also have access to a variety of supplemental news services for specialized and interpretative articles far beyond the limited number of such services available in any other country. Indeed, at the present time more than 30 different news services are available to newspapers in all or parts of the United States. These include not only the two major U.S. wire services and supplemental and specialized U.S. news services, but also foreign-owned services such as those of the Reuters News Agency and the Times of London. These news wire services are all heavily dependent upon private line communications services leased from AT&T.

Finally, many newspapers use private line services for internal purposes, such as to provide links to remotely lo-

cated news bureaus, to transmit news copy, features, or photographs among members of a newspaper group, or even to transmit prepared copy from editorial offices to printing locations by use of sophisticated digital computer techniques.

The importance of efficient, economical communications services for the press has long been recognized, and is currently embodied in §201(b) of the Communications Act of 1934, which authorizes the Commission to establish a press classification of service which may have lower rates than those set for other classes of service.

The impact of the present rate increases proposed by AT&T must be viewed against a background of repeated rate increases over the past decade, many of which have fallen more heavily upon the press than on AT&T's customers generally.

In 1967, AT&T changed the interexchange mileage step-down pattern for private line service to increase the charge for short hauls and lower the charge for long hauls. While this change was not intended to increase AT&T's overall revenues, it did throw more of a burden onto the news wire services, and thus indirectly onto newspapers, because the news wire services use a relatively high proportion of short interexchange channel sections. Also in 1967, AT&T eliminated Telpak A and B pursuant to the Commission's decision in Docket No. 14251. This change forced the major news wire ser-

vices largely to discontinue the use of Telpak with resultant cost increases passed along to daily newspapers.

In 1971, AT&T eliminated the press rate tariff pursuant to the Commission's decision in Docket No. 15094. The elimination of press rates also sharply increased telephotograph service terminal rates.

In 1972, AT&T increased its charges for Telpak and for single channel service terminals. This not only resulted in increased overall revenues for AT&T but also represented a restructuring of private line rates so as, once again, to impose a heavier burden on the users of short haul and multiple station circuits, which are typical of the press use. Included among these rate increases was a further rate increase for telephotograph service terminals which specially singled out the press users, who are the primary (if not only) users of telephotograph services. Another adverse development for the press in 1972 was the failure of the efforts of the news wire services to share Telpak among press users as a result of the Commission's decision in Docket No. 17457.

In 1973, AT&T imposed increases on MTS and WATS service designed to increase its overall rate of return, pursuant to the Commission's decision in Docket No. 19129.

Finally, in 1974, AT&T's HiLo rate structure for private line service became effective. These rate revisions,

if approved by the Commission and made applicable to the press, would impose a $4.8 million per year increase for private line service on the five major newswire services--an unprecedented 43% rise in their costs for this service, most if not all of which would have to be passed on to ANPA's members.

In the short time available to prepare this petition following AT&T's unheralded filing it has not been possible to assess the complete scope of the impact of the present rate increase proposal on daily newspapers. However, it is clear that the impact will be serious. First, unlike the majority of AT&T's rate increases in recent years, this filing involves substantial increases for most categories of long distance message telephone calls. As one example of what these rate increases can mean to daily newspapers, the cost of a three minute collect call by a reporter for a Washington, D.C. newspaper covering a story in Baltimore will increase by an unthinkable 90%. Because of the variable impact of the filing on different types of calls--affecting most heavily longer duration calls, placed over shorter distances, and especially those requiring operator assistance--the percent increase in this example is clearly more indicative of the true extent of the impact on newspapers than is AT&T's assertion that its overall revenues for MTS will rise by 7.2% in 1975.

Additionally, the filing proposes massive increases for WATS rates in the lower mileage bands, ranging up to 34% for full business day service to weighted mileage bands of 150 miles and under. WATS is an important communications service for many newspapers, especially those which gather news over a fairly dispersed region, and these increases may well render the continued use of WATS by many press customers uneconomical, thus inhibiting the gathering of regional news.

Finally, the AT&T filing proposes a virtual across-the-board 7.8% rate increase for private line service. These increases will affect many newspapers which directly use private line service and, more significantly, will indirectly affect newspapers because of the additional impact on the news wire services, a major portion of whose costs are for private lines. ANPA estimates that present costs for the five largest news wire services alone will be increased by roughly $800,000 per year over rates now effective. This filing, if effectuated, would also exacerbate the potential adverse impact of the HiLo tariff on these five services by more than $1/3 million annually. Since the news wire services must inevitably pass most of these increases on to daily newspapers, the ultimate burden will fall on ANPA's members.

The Commission Can and Should Cancel the Rate Increases Without an Evidentiary Hearing

ANPA recognizes that the relief it requests in this petition - cancellation of rate increases without an evidentiary hearing - is extraordinary. However, ANPA also believes that the problems of regulating the world's largest supplier of communications services in the public interest are extraordinary and call for such relief. As is shown below, the Commission has ample authority to take this step, and there are compelling reasons why it should do so in this case.*

The basic authority for the Commission to cancel this tariff without an evidentiary hearing was succinctly stated by Judge Leventhal in Municipal Light Boards v. FPC, 450 F.2d 1341, 1345 (D.C. Cir. 1971):

> "There are occasions when an agency may dispose of a controversy on the pleadings without an evidentiary hearing when the opposing presentations reveal that no dispute of fact is involved, but only a question of law or administrative policy of such a nature that there is neither a dispute as to material facts nor a need to ventilate the underlying facts to aid in policy determination."

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* ANPA also believes that this rate filing is "demonstrably unlawful on its face" and should be rejected without reference to the filings of other parties. See Associated Press v. FCC, 448 F.2d 1095, 1103 (D.C. Cir. 1971); Municipal Light Bds. v. FPC, 450 F.2d 1341, 1346 (D.C. Cir. 1971). Accordingly, ANPA has filed contemporaneously with this petition a petition to the Chief, Common Carrier Bureau to reject these rate increases.

In the radio licensing context, the Supreme Court has made it clear that applications clearly contrary to a Commission rule may be denied without a hearing. As the Court said, "We do not think Congress intended the Commission to waste time on applications that do not state a valid basis for a hearing." United States v. Storer Broadcasting Co., 351 U.S. 192, 205 (1956). This reasoning is equally applicable to the Commission's authority to regulate common carriers since the principle is generally recognized that

> "the right of opportunity for hearing does not require a procedure that will be empty sound and show, signifying nothing. The precedents establish, for example, that no evidentiary hearing is required where there is no dispute on the facts and the agency proceeding involves only a question of law." Citizens for Allegan County, Inc. v. FPC, 414 F.2d 1125, 1128 and cases cited n.5 (D.C. Cir. 1969).

ANPA recognizes that the usual Commission procedure concerning a tariff filing of questionable lawfulness is a suspension and investigation under §204 of the Communications Act. Furthermore, ANPA commends the Commission for its attempts in recent cases such as the Hi/Lo Case (Docket No. 19919), and the WATS Case (Docket No. 19989) to expedite §204 investigations in recognition of the serious impact on customers of rate increases which go into effect after the three month suspension period provided for in §204. However, as the Commission is well aware, even these expedited proceedings cannot be completed within the three

month suspension period. The Hi/Lo investigation, for example, was instituted more than a year ago, 44 F.C.C.2d 697 (1974), and the case still awaits a Commission decision. Of course, a case such as Hi/Lo involves complex factual issues which must be resolved to determine the lawfulness of the tariff revisions at issue, and lengthy proceedings are necessary to assure that all parties are accorded due process and the record is fully developed.

With regard to the present filing, however, ANPA believes that AT&T's submission in support of the requested rate increases clearly shows that an inquiry into underlying factual questions is not necessary before a decision can be made on the lawfulness of the tariff revisions. Specifically, the entire filing is premised on an alleged need by AT&T for a greatly increased rate of return. As admitted in Bell Statement 2, page 16, submitted with the filing, "the estimated effect of the new rate schedules at 1975 levels of business would be an increase in the viewed rate of return for 1975 to 10 3/4 percent." This 10 3/4% rate of return far exceeds the 8.5 - 9.0% return found reasonable by the Commission in Docket 19129, 38 F.C.C.2d 213, 245 (1972), and the tariff filing can and should be cancelled solely on that ground.

The Second Circuit, in its recent detailed analysis of the Commission's powers to suspend or reject rate increases, specifically recognized that such a procedure

might be followed:

> "Neither the filing nor the effectiveness of new rates renders moot a determination of the lawfulness of rates previously charged. . . . Significant questions of law and policy resolved in [the Commission's] adjudication of the old rates can be applied to its evaluation of the new ones." American Telephone & Telegraph Co. v. FCC, 487 F.2d 864, 880 (2d Cir. 1973).

The 8.5 - 9.0% rate of return was established by the Commission at the conclusion of Phase I of Docket 19129, an investigation pursuant to, inter alia, §205 of the Communications Act into the lawfulness of MTS rate increases proposed by AT&T. AT&T had a full opportunity for hearing in that proceeding, and, at its conclusion, the Commission specifically found that "an earned rate of return within this 8.5 - 9.0% range at these tariff rates would be considered by us to be reasonable." 38 F.C.C.2d at 245. The Commission then ordered AT&T to cancel proposed rates predicated on a rate of return objective of 9.5%, id. at 251, and permitted AT&T to file rate increases consistent with its Order on an interim basis subject to further hearings as to the lawfulness of the specific components of the revised rate schedules in Phase II of Docket No. 19129 and to the Commission's decision on ratemaking principles and factors in Docket No. 18128. 38 F.C.C.2d 984, 985, 987 (1973).

ANPA submits that the net effect of these orders is to prohibit AT&T from implementing rate increases which

would increase its rate of return above the 8.5 - 9.0% level during the pendency of Dockets 19129 and 18128, at least in the absence of special permission by the Commission.

The Second Circuit opinion supports this view. The Court held that a rate prescription under §205 requires a "full opportunity for hearing" and a determination "that the rate to be prescribed will be 'just and reasonable.'" 487 F.2d at 874. This the Commission has done. Although the Commission did not use the term "prescribe" in its orders, nonetheless, as the Court held, "[T]o determine whether rates have been prescribed the actual impact of agency action and not its form is decisive." Id. See also American Telephone & Telegraph Co. v. FCC, 449 F.2d 439, 451 & n.12 (2d Cir. 1971).

The Court also emphasized that the effect of a §205 rate prescription is that "[i]t compels the carrier to adhere to a fixed rate which can be revised only with prior Commission permission." 487 F.2d at 874. In addition, "the Commission may prescribe rates which are 'just and reasonable' and may require the latest tariffs filed to be adjusted to conform to such prescription." Id. at 880-81.

Thus, ANPA submits that the Commission has indubitable authority to cancel these rate increases and specify that AT&T seek special permission for an increased rate of return, and/or file a new set of tariff revisions which conforms to

the prescribed 8.5 - 9.0% rate of return. Assuming AT&T chooses to seek special permission for an increased rate of return, the Commission could evaluate the merits of such a request in a full evidentiary hearing without allowing massive, and not yet justified, rate increases to be imposed on users.

ANPA urges the Commission to take the action summarized above without further proceedings, since AT&T's filing is so clearly contrary to a Commission Order. Nonetheless, if the Commission should deem additional legal argument to be in order, ANPA notes that the Second Circuit opinion states that "[d]uring the evaluation [of new rates by applying law and policy resolved as to old rates], the Commission may suspend the rate changes for the three month period and may further protect users by entering an accounting order for possible refunds." 487 F.2d at 881. Thus, without setting out on an unnecessary and time consuming evidentiary hearing, the Commission has a "breathing space" during which to evaluate the threshold legal and policy questions applicable to this rate filing.

At a Minimum the Commission Should Suspend and Investigate the Rate Increases

For the reasons stated above, the best course for the Commission to follow with regard to these proposed rate increases is to cancel them without a hearing, leaving open

the possibility of a hearing on the merits of AT&T's proposal in the context of a request for special permission to file rates for an increased rate of return.

If, however, the Commission does not elect this course, the questionable lawfulness of the filing demands that it be suspended for the full statutory period and subjected to an investigation under §204 of the Act. ANPA has not yet had time to evaluate in detail the factual allegations in AT&T's 8,000-page background support for this filing, and assumes that no other party, including the Common Carrier Bureau, has done so either. This fact alone would require a hearing. Moreover, the substantial impact on the cost to newspapers of gathering news raises serious questions as to whether this filing is in the public interest in the absence of a provision for reduced rates to the press as envisioned by §201(b) of the Act.

In addition, this tariff filing affects rates which are at issue in Docket Nos. 18128 (Telpak/Private Line), 19129 (MTS/WATS), 19919 (Private Line), and 19989 (WATS). The relationship of the present filing to the rates at issue in those proceedings should be explored in those dockets and/or in a new proceeding.

Finally, ANPA urges the Commission to establish expedited procedures, consistent with due process, for any investigation it may undertake, in order that the burdens

of increased rates not be prolonged unnecessarily. In any such hearing order the Commission should require an accounting for possible refunds of overcharges in order to protect users, to that extent at least, from rate increases which ANPA is confident will ultimately be found unlawful.

WHEREFORE, ANPA requests that the Commission cancel without an evidentiary hearing the rate increases filed with AT&T Transmittal No. 12241 and require AT&T to obtain special permission before filing any rate increases premised on a rate of return in excess of 8.5 - 9.0%. In the alternative, and at a minimum, ANPA requests the Commission to suspend for three months, investigate on an expedited basis, and order an accounting of these rate increases.

Respectfully submitted,

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION

By /s/ Aloysius B. McCabe
Aloysius B. McCabe

/s/ Michael Yourshaw
Michael Yourshaw

of

Kirkland, Ellis & Rowe
1776 K Street, N.W.
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Its Attorneys

January 28, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
	)	
	)	Transmittal No. 12241
Revisions to Tariffs F.C.C. Nos. 259, 260, and 263	)	

To: Chief, Common Carrier Bureau

PETITION TO REJECT

The American Newspaper Publishers Association (ANPA), by its attorneys, hereby petitions the Chief, Common Carrier Bureau to reject the rate increases filed by the American Telephone & Telegraph Company (AT&T) on January 3, 1975, by AT&T Transmittal No. 12241. In support of this petition ANPA shows the following:

There can be no doubt that the Commission has authority to reject this tariff filing if it is "demonstrably unlawful on its face." Associated Press v. FCC, 448 F.2d 1095, 1103 (D.C. Cir. 1971). See also American Telephone & Telegraph Co. v. FCC, 487 F.2d 864, 880 n.33 (2d Cir. 1973). The rejection of a tariff by an agency is permitted not only because of "defects of form" but also "where the filing is so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by

obviating any docket at the threshold rather than opening a futile docket." Municipal Light Boards v. FPC, 450 F.2d 1341, 1346 (D.C. Cir. 1971).

Specifically, §§ 61.38 and 61.69 of the Commission's Rules require AT&T to submit sufficient data to show that the rate has prima facie support, or face rejection. See Tariffs, 25 F.C.C.2d 957, 965, 973 (1970).

As is shown in detail in ANPA's "Petition To Cancel or, in the Alternative, Suspend and Investigate," filed with the Commission contemporaneously with this petition, the supporting material filed with AT&T's January 3, 1975, rate increase proposal clearly shows that the filing is in direct contravention of the Commission's rate of return Order in Docket No. 19129, 38 F.C.C.2d 213 (1972), in that the filing is based on a 10.75% rate of return whereas the Commission has established an 8.5 - 9.0% rate of return as reasonable for AT&T. A copy of ANPA's petition to the Commission is attached hereto and is incorporated by reference in further support of this petition to reject.

There is no need for extensive legal argument, hearings, or other proceedings prior to rejection of AT&T's filing. AT&T freely admits throughout its supporting material that the filed rates are intended to achieve a rate of return of 10.75%. See, e.g., Bell Statement 2, p. 16. It is equally clear that the Commission has specified a range of

8.5 - 9.0% as the range of reasonableness for the earnings of Bell on its interstate operations. 38 F.C.C.2d 213, 245 (1972). This Commission Order has the force and effect of law, and, therefore, AT&T's rate filing is "demonstrably unlawful on its face." Thus, the duty of the Chief, Common Carrier Bureau is clear: to reject this tariff filing before it can become effective.

Respectfully submitted,

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION

By /s/ Aloysius B. McCabe
Aloysius B. McCabe

/s/ Michael Yourshaw
Michael Yourshaw

of

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1776 K Street, N.W.
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Its Attorneys

January 28, 1975

ATTACHMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
	)	Transmittal No. 12241
Revisions to Tariffs F.C.C. Nos. 259, 260, and 263	)	

To: The Commission

PETITION TO CANCEL OR, IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE

The American Newspaper Publishers Association (ANPA), by its attorneys, hereby petitions the Commission to cancel without an evidentiary hearing the rate increases filed by the American Telephone & Telegraph Company (AT&T) on January 3, 1975, by AT&T Transmittal No. 12241. In the alternative, ANPA petitions the Commission to suspend the rate increases for three months, institute an investigation of the lawfulness thereof, and, if the investigation has not been concluded and an order made within the period of the suspension, require the carrier to keep accurate account of all amounts received by reason of such increases, specifying by whom and in whose behalf such amounts are paid, and upon completion of the investigation and decision require the carrier to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased charges as by its deci-

[The remainder of ANPA's Petition to Cancel is reproduced at A. 284-301, supra.]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
	)	Transmittal No. 12241
Revisions to Tariffs F.C.C. Nos. 259, 260, and 263	)	

To: The Commission

PETITION TO CANCEL OR,
IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE

The Associated Press (AP), by its attorneys, hereby petitions the Commission to cancel, without an evidentiary hearing, the rate increases filed by the American Telephone & Telegraph Company (AT&T) on January 3, 1975, by AT&T Transmittal No. 12241. In the alternative, AP petitions the Commission to suspend the rate increases for three months, institute an investigation of the lawfulness thereof, and, if the investigation has not been concluded and an order made within the period of the suspension, require the carrier to keep accurate account of all amounts received by reason of such increases, specifying by whom and in whose behalf such amounts are paid, and upon completion of the investigation and decision require the carrier to refund, with interest, to the persons in whose behalf such amounts

were paid, such portion of such increased charges as by its decision shall be found not justified. In support of this petition AP shows the following:

In essence, AT&T's latest rate proposal is designed to increase its profits on interstate telephone service far beyond the rate of return allowed and declared reasonable by the Commission only two years ago in Docket No. 19129. 38 F.C.C.2d 213 (1972). The Commission has authority to cancel a tariff filing, such as this one, which is patently contrary to a Commission order, without an evidentiary hearing. Because of the severe impact of these rate increases on AP's news wire services, and on the public generally, at a time of double digit inflation, and because of the disruptive timing of this filing in relation to other rate proceedings before the Commission, this authority to cancel without hearing should be exercised with regard to this filing. At a minimum, for the above reasons, the filing should be suspended for the maximum statutory period and be subjected to a thorough investigation as to its lawfulness.

AP's Interest

The Associated Press is one of the principal suppliers to the nation's newspapers and broadcast stations of national, international, and regional news. AP is a non-profit cooperative whose membership includes more than 1,250 daily

newspapers and more than 3,500 broadcast stations, many of which also subscribe to other news and supplemental news services.

AP's purpose is to gather and disseminate rapidly and accurately to its members news from all parts of the world. The operational philosophy of The Associated Press is set out in Article 1 of its By-laws. According to the By-laws:

> "The Associated Press is a mutual and cooperative association formed to gather with economy and efficiency an accurate and impartial report of the news. The union for a common aim and purpose of representatives of all shades of thought and opinion - political, social, economic, religious - is assurance the news gathered and distributed by The Associated Press shall be as objective and complete as human endeavor can make it."

The general news services of AP include both multiple and single wire services, depending upon the needs of the individual members served. A multiple wire service includes one wire providing in-depth reporting of general news of national and international significance, gathered in more than 100 countries, and additional wires providing news of state and regional interest, or special subject interest, such as sports and business news. A single wire service provides national and international news and appropriate state, regional, and special subject interest news on one wire.

To serve the needs of its broadcast members, AP provides continually revised news in a format suitable for

immediate broadcast by radio and television stations. This format includes periodic news summaries written in the form of five and ten minute news scripts, urgent news bulletins on important events, in-depth coverage of important news, regional and local news pertaining to each member's own area, and a balance of sports, weather, financial news, and other news and news features. A similar but separate service is provided for CATV operators.

AP has recently supplemented its existing broadcast wire service with an audio news service known as "Associated Press Radio" or "APR." Through APR, AP makes available to its members a variety of audio news dispatches, including spot reports of news "actualities," headline packages, special short reports on agriculture and business, and regional newsfeeds based on news contributions by regional members. In addition, AP offers hourly newscast materials, which can be employed by subscribing stations in 30-, 90-, or 210-second segments, depending upon the subscribing stations' format preferences.

AP financial wires provide reporting and analysis of the nation's and the world's business, and tabulation of trading on all major United States security and commodity exchanges from open to close of every trading day. These services include complete and abbreviated daily and weekly stock lists at the close of trading and pre-closing com-

plete and abbreviated lists throughout each trading day. The financial services are available to members on wires operating either at 66 words per minute or on Dataspeed circuits sending at 1,050 or 2,100 words per minute. These Dataspeed circuits are also used to transmit presidential texts and other important news documents. In most newspaper situations, a reperforating device connected to the wire generates a TeleTypeSetter (TTS) tape for use by the newspaper in automatic typesetting.

The special news wire category includes the sports wire (general and regional sports news), the race wire (horse race results), baseball play-by-play wires, and many other special wire circuits established by AP to serve individual needs of members or groups of members.

The AP wirephoto service provides a variety of pictures on regional, national, and international events, along with daily weather maps, news maps, sketches, and color separations to over 700 newspapers and television stations in the United States and Canada.

To provide perishable news and news feature material to its members, AP is dependent upon an extensive network of private line services leased from AT&T which fall into four broad categories of circuitry: Dataspeed circuits carrying stock market tables to big city newspapers; the APR circuit, which carries AP's audio service to radio

broadcasters; a telephotograph circuit; and a multiplexed voice grade circuit which transmits news information at telegraph speeds over a number of channels.

The principal vehicle for distributing Associated Press news to subscribing newspapers and broadcast stations is a 71,434 mile Carrier Transmission System employing voice grade circuits leased from AT&T. AP-owned equipment derives up to 25 individual 66 word-per-minute telegraph circuits from this channel. The network has 95 individual circuit sections, 53 of which provide a backbone of trunk mileage coast-to-coast and 42 of which extend the backbone to individual states or small groups of states in order to carry AP's news reports to all users.

AP also leases a special circuit used only for high-speed stock market table transmissions which employs an additional 18,061 miles of voice grade channels. The APR circuit comprises 11,000 miles of Series 2000 channels. A separate fourth circuit of Series 4000 telephotograph circuits covering 28,500 miles is devoted exclusively to picture collection and distribution. In addition, AP uses some Series 1000 telegraph grade circuitry.

Finally, AP makes extensive use of long distance (MTS) service and WATS for news gathering and administrative purposes.

The total cost for AP's private line service last month was $509,472. Long distance toll calls cost AP another $1.3

million. AT&T's tariff filing will increase AP's private line bill by 7.8% or nearly $40,000 per month - $477,000 annually. Because of the complex restructuring of the rates for long distance telephone calls and WATS, AP has not been able, within the limited time available to prepare this petition, to determine the exact impact of the MTS and WATS rate revisions on it. However, since most of AP's long distance calls are much longer than one minute, and many of them are between relatively less distant points, as distinguished from transcontinental calls, AP is sure that the impact of the MTS rate increases on it will be substantial.

The overall impact of this rate increase proposal on AP must be viewed in the light of previous and threatened rate increases. In 1967, AT&T changed the interexchange mileage stepdown pattern to increase the charge for short hauls and lower the charge for long hauls. While this change was not intended to increase AT&T's overall revenues, it did throw more of a burden onto the news wire services, which use a relatively high proportion of short interexchange channel sections. This tariff change cost AP an additional $120,000 annually. Also in 1967, AT&T eliminated Telpak A and B pursuant to the Commission's decision in Docket No. 14251, which forced AP to discon-

tinue its 10,000 mile Telpak network. The cost impact of this tariff change was approximately $288,000 annually.

In 1971, AT&T eliminated the press rate tariff pursuant to the Commission's decision in Docket No. 15094. The elimination of press rates also sharply increased telephotograph service terminal rates - from $15 to $50 per month for half-duplex, one-way, and from $25 to $60 per month for half-duplex, two-way. The immediate but temporary cost impact to AP was at a rate of $252,000 annually.

The two tariff changes listed immediately above forced upon AP the entirely new expense of multiplexing. To cope with both the change in Telpak and the loss of press rates, AP initiated a program of investment in multiplexing equipment which has created the Carrier Transmission System now providing the basic means for distributing the AP news report. AP began to install the frequency-divison equipment used to multiplex telegraph channels from Series 3000 voice grade lines in mid-1967 at a total cost of approximately six million dollars. Because of AP's structure as a service cooperative, with a fiscal goal of matching income to expenses, AP had no reserve for investment on this scale and was forced during the early years of this program to borrow heavily. While this investment has served to control the level of leased line payments to AT&T, opera-

tion of the multiplexing network, maintenance, and amortization have driven total communications costs on a constant upward spiral. Meanwhile, AT&T has been completely relieved of responsibility for telegraph multiplexing and provides to AP only the voice grade channel, greatly reducing AT&T's test room responsibility. In effect, the telegraph service test room function has passed to the customer, The Associated Press.

In 1972, AT&T increased its charges for Telpak and for single channel service terminals. This not only resulted in increased overall revenues for AT&T but also represented a restructuring of private line rates so as, once again, to impose a heavier burden on the users of short haul and multiple station circuits, which are typical of the press use. Included among these rate increases was a further rate increase for telephotograph service terminals of about $5 per month (about 10%) on top of 140% to 233% increases experienced in 1971. These telephotograph rate increases especially singled out the press users, who are the primary (if not only) users of telephotograph services. These changes resulted in increased payments by AP of $216,000 annually. Also in 1972, the efforts of AP and other press parties to share Telpak service among press entities finally failed when AT&T eliminated the sharing provisions for all

users pursuant to the Commission's decision in Docket No. 17457.

On November 15, 1973 AT&T filed revisions to its tariff offering of private line voice grade service which eliminated the long established practice of charging uniform nationwide rates and substituted a new rate structure with generally increased rates on low density routes and decreased rates on high density routes. Included in the HiLo tariff revisions were vastly increased terminal charges. AP estimates that the HiLo rate structure would produce a 31% increase in costs for AP's leased line service. At present, AP is operating under Series 5000 service, which has not yet been subjected to the HiLo rate structure. However, AT&T has repeatedly indicated that it has plans to revise the Series 5000 offering and AP has no reason to believe that the use of this service will provide relief from HiLo for any substantial length of time. If HiLo should become applicable to AP its estimated impact of more than $1 million per year will be exacerbated by an additional $84,000 per year.

The Commission Can and Should Cancel the Rate Increases Without an Evidentiary Hearing

The substantial impact of these rate increases on AP and other AT&T customers alone would draw into question

whether or not the public interest would be served by permitting the increases to go into effect prior to a determination as to their lawfulness. Moreover, the inflationary impact of a $1/2 billion increase in AT&T's revenues, in these times of economic crisis, cannot be permitted if the Commission has any means at its disposal to prevent it. Finally, the rate increases now proposed will change rates which are already under investigation by the Commission in Dockets 19989 (WATS), 19919 (HiLo), 19129 (MTS and WATS), and 18128 (Telpak and private line). Since these proceedings are examining both the justification for AT&T's rate structure and the particular levels set for AT&T's services, this new filing inevitably will require the reopening of the record in all of these proceedings with the attendant delay and disruption of the administrative process which that implies.

For all of the above reasons it is in the urgent public interest that the Commission not permit these rate increases to become effective and remain in effect during the pendency of the above proceedings and any new proceeding which may be instituted. The Commission has an option to avoid such an injury to the public interest. As is shown in detail in the "Petition To Cancel or, in the Alternative, Suspend and Investigate" of the American Newspaper Publishers Asso-

ciation filed contemporaneously herewith, the Commission has ample regulatory authority to cancel this tariff without an evidentiary hearing on the grounds that the 10.75% rate of return upon which it is premised far exceeds the 8.5 - 9.0% return found reasonable by the Commission in Docket No. 19129. In the interest of avoiding repetition, AP adopts ANPA's legal argument and incorporates it by reference herein.*

AP believes that the public interest requires the Commission to cancel this tariff filing which contemplates rate increases clearly at odds with a Commission order. The appropriate procedure for evaluating AT&T's claims that it needs an increased rate of return would be to require AT&T to request special permission to file these rate increases and to hold a full evidentiary hearing on the merits of AT&T's request prior to permitting any increases to become effective.

In the Alternative, at a Minimum, the Commission Should Suspend and Investigate the Rate Increases

AP does not believe that a conventional suspension and investigation, which would permit the rate increases

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* AP also wishes to indicate its support for ANPA's "Petition To Reject" these tariff increases filed with the Chief, Common Carrier Bureau.

to go into effect, is consistent with the public interest or required by law in this case. If, however, the Commission does not decide to cancel these rate increases, nonetheless, the impact on AT&T's customers, the potential effect on the economy, and the questions presented regarding the relationship of this rate filing to those already under investigation in other Commission proceedings all require that this filing be suspended for the maximum statutory period of three months and be subject to an investigation under §204 of the Act. Any such investigation, in order to protect the public interest, should proceed as expeditiously as is consistent with due process, in order that the burdens of increased rates not be prolonged unnecessarily. In any such hearing order the Commission should require an accounting for possible refunds of overcharges, in order to protect users, to that extent at least, from rate increases which AP is confident will ultimately be found unlawful.

WHEREFORE, AP requests that the Commission cancel without an evidentiary hearing the rate increases filed with AT&T Transmittal No. 12241 and require AT&T to obtain special permission before filing any rate increases premised on a rate of return in excess of 8.5 - 9.0%. In the alternative, and at a minimum, AP requests the Commission

to suspend for three months, investigate on an expedited basis, and order an accounting of these rate increases.

Respectfully submitted,

THE ASSOCIATED PRESS

By /s/ Aloysius B. McCabe
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/s/ Michael Yourshaw
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In the Matter of	)	
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AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
	)	Transmittal No. 12241
Revisions to Tariffs F.C.C. Nos. 259, 260, and 263	)	

To: The Commission

PETITION TO CANCEL OR,
IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE

Commodity News Services, Inc. (CNS), by its attorneys, hereby petitions the Commission to cancel, without an evidentiary hearing, the rate increases filed by the American Telephone & Telegraph Company (AT&T) on January 3, 1975, by AT&T Transmittal No. 12241. In the alternative, CNS petitions the Commission to suspend the rate increases for three months, institute an investigation of the lawfulness thereof, and, if the investigation has not been concluded and an order made within the period of the suspension, require the carrier to keep accurate account of all amounts received by reason of such increases, specifying by whom and in whose behalf such amounts are paid, and upon completion of the investigation and decision require the carrier to refund, with interest, to the persons in whose behalf such amounts

were paid, such portion of such increased charges as by its decision shall be found not justified. In support of this petition CNS shows the following:

In essence, AT&T's latest rate proposal is designed to increase its profits on interstate telephone service far beyond the rate of return allowed and declared reasonable by the Commission only two years ago in Docket No. 19129. 38 F.C.C.2d 213 (1972). The Commission has authority to cancel a tariff filing, such as this one, which is patently contrary to a Commission order, without an evidentiary hearing. Because of the severe impact of these rate increases on CNS's news wire services, and on the public generally, at a time of double digit inflation, and because of the disruptive timing of this filing in relation to other rate proceedings before the Commission, this authority to cancel without hearing should be exercised with regard to this filing. At a minimum, for the above reasons, the filing should be suspended for the maximum statutory period and be subjected to a thorough investigation as to its lawfulness.

CNS's Interest

Commodity News Services, Inc. provides specialized news wires for various segments of American agriculture and related businesses. Its headquarters are in Kansas City, Missouri. CNS provides more than 3,300 subscribers with

up-to-the-minute news and statistical information of agricultural and other commodity markets.

The services provided by CNS over its leased circuit consist of the following news wires: (1) LFM News, (2) Grain Instant News, (3) Poulty and Egg News, (4) Commodity News Service, (5) Active Commodity Trading News, (6) Private Agricultural Markets, (7) Lurber Instant News, (8) Transportation News Ticker, (9) Cotton Exchange News Ticker, (10) Ridder News Service, and (11) Farm Radio News. Other channels of the CNS circuit are used for CNS internal editorial communications.

The news services provided by CNS serve the vital function of the immediate transmission of raw and analyzed specialized news data throughout the entire American agricultural market, both rural and urban.

In major cities, such information is available at least partially from other sources, but the CNS services are the equalizer for rural interests, giving them the news on which their decisions must be based at the same moment that the big city markets receive identical information. Without such news wire services these rural interests may be as much as a day behind the market, except for what sketchy radio and TV reports they might receive. Even generalized reports in the next day's newspapers lack the specialization and detail of these services. Reliance on radio, TV, and

newspaper reports is not adequate for the agricultural industry in today's fast moving, competitive climate.

Prompt, up-to-the-minute dissemination by an independent news gathering organization of current prices, market developments, and similar news is vital in promoting market stabilization and enabling the producers and marketers in agricultural and ranching communities to be as fully informed as are the major operators in central marketing and distribution centers. The instant news feature which CNS wires provide enables the producer and marketer to channel his shipments into those selected marketing areas where he is assured of an adequate return on his product. This also permits the distributors to concentrate their purchases in those selected producing areas where the supply and demand factors are such that the buyer can secure his supplies at attractive price levels. All of these results accrue to the benefit of the ultimate consumer.

CNS serves its customers exclusively through private leased line facilities. Substantially all of these facilities are provided by a 34,788 mile voice grade circuit which includes 3,032 service terminals. The cost of this circuit is CNS's largest single cost. For January 1975, this cost amounted to $154,000. In addition, CNS spends roughly $12,000 per month for long distance (MTS) calls used to gather news information, for liaison with subscribers, and for general administrative purposes.

AT&T's tariff filing will increase CNS's private line bill by 7.8% or $12,000 per month - $144,000 annually. Because of the complex restructuring of the rates for long distance telephone calls, CNS has not been able, within the limited time available to prepare this petition, to determine the exact impact of the MTS rate revisions on it. However, since most of CNS's long distance calls are much longer than one minute, and many of them are between relatively less distant points, as distinguished from transcontinental calls, CNS is sure that the impact of the MTS rate increases on it will be substantial.

The overall impact of this rate increase proposal on CNS must be viewed in the light of previous and threatened rate increases. Prior to 1969, CNS used four telegraph grade circuits and leased teleprinters under the press rates then existing. In order to avoid the impact of the impending loss of press rates, CNS invested approximately $4 million in teleprinter and multiplexing equipment and installation costs. This equipment was installed on the present voice grade circuit which was started in 1969. In making this investment CNS management planned that there would be no drastic changes in Tariff 260 affecting the rates for that circuit.

In May 1972 AT&T raised station terminal charges by $2.50 per terminal and raised installation charges by

$40.00 or 400%. These increases cost CNS $144,582 in 1973, or 10% of its circuit costs.

On November 15, 1973 AT&T filed revisions to its tariff offering of private line voice grade service which eliminated the long established practice of charging uniform nationwide rates and substituted a new rate structure with generally increased rates on low density routes and decreased rates on high density routes. Included in the HiLo tariff revisions were vastly increased terminal charges. CNS estimates that the HiLo rate structure would produce a 52% increase in costs for CNS's leased line service. At present, CNS is operating under Series 5000 service, which has not yet been subjected to the HiLo rate structure. However, AT&T has repeatedly indicated that it has plans to revise the Series 5000 offering and CNS has no reason to believe that the use of this service will provide relief from HiLo for any substantial length of time. If HiLo should become applicable to CNS its estimated impact of nearly $1 million per year will be exacerbated by an additional $75,000 per year.

The Commission Can and Should Cancel the Rate Increases Without an Evidentiary Hearing

The substantial impact of these rate increases on CNS and other AT&T customers alone would draw into question whether or not the public interest would be served by per-

mitting the increases to go into effect prior to a determination as to their lawfulness. Moreover, the inflationary impact of a $1/2 billion increase in AT&T's revenues, in these times of economic crisis, cannot be permitted if the Commission has any means at its disposal to prevent it. Finally, the rate increases now proposed will change rates which are already under investigation by the Commission in Dockets 19989 (WATS), 19919 (HiLo), 19129 (MTS and WATS), and 18128 (Telpak and private line). Since these proceedings are examining both the justification for AT&T's rate structure and the particular levels set for AT&T's services, this new filing inevitably will require the reopening of the record in all of these proceedings with the attendant delay and disruption of the administrative process which that implies.

For all of the above reasons it is in the urgent public interest that the Commission not permit these rate increases to become effective and remain in effect during the pendency of the above proceedings and any new proceeding which may be instituted. The Commission has an option to avoid such an injury to the public interest. As is shown in detail in the "Petition To Cancel or, in the Alternative, Suspend and Investigate" of the American Newspaper Publishers Association filed contemporaenously herewith, the Commission

has ample regulatory authority to cancel this tariff without an evidentiary hearing on the grounds that the 10.75% rate of return upon which it is premised far exceeds the 8.5 - 9.0% return found reasonable by the Commission in Docket No. 19129. In the interest of avoiding repetition, CNS adopts ANPA's legal argument and incorporates it by reference herein.*

CNS believes that the public interest requires the Commission to cancel this tariff filing which contemplates rate increases clearly at odds with a Commission order. The appropriate procedure for evaluating AT&T's claims that it needs an increased rate of return would be to require AT&T to request special permission to file these rate increases and to hold a full evidentiary hearing on the merits of AT&T's request prior to permitting any increases to become effective.

In the Alternative, at a Minimum, the Commission Should Suspend and Investigate the Rate Increases

CNS does not believe that a conventional suspension and investigation, which would permit the rate increases to go into effect, is consistent with the public interest

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* CNS also wishes to indicate its support for ANPA's "Petition To Reject" these tariff increases filed with the Chief, Common Carrier Bureau.

or required by law in this case. If, however, the Commission does not decide to cancel these rate increases, nonetheless, the impact on AT&T's customers, the potential effect on the economy, and the questions presented regarding the relationship of this rate filing to those already under investigation in other Commission proceedings all require that this filing be suspended for the maximum statutory period of three months and be subject to an investigation under §204 of the Act. Any such investigation, in order to protect the public interest, should proceed as expeditiously as is consistent with due process, in order that the burdens of increased rates not be prolonged unnecessarily. In any such hearing order the Commission should require an accounting for possible refunds of overcharges, in order to protect users, to that extent at least, from rate increases which CNS is confident will ultimately be found unlawful.

WHEREFORE, CNS requests that the Commission cancel without an evidentiary hearing the rate increases filed with AT&T Transmittal No. 12241 and require AT&T to obtain special permission before filing any rate increases premised on a rate of return in excess of 8.5 - 9.0%. In the alternative, and at a minimum, CNS requests the Commission

to suspend for three months, investigate on an expedited basis, and order an accounting of these rate increases.

Respectfully submitted,

COMMODITY NEWS SERVICES, INC.

By /s/ Aloysius B. McCabe
Aloysius B. McCabe

/s/ Michael Yourshaw
Michael Yourshaw

of

Kirkland, Ellis & Rowe
1776 K Street, N.W.
Washington, D.C. 20006

Its Attorneys

January 28, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
and the Associated Bell System Companies	)	
	)	Docket No. 19129
Charges for Interstate Telephone Service	)	
Transmittal Nos. 10989 and 11027; and	)	
Transmittal No. 12241 (1975)	)	

TO: The Commission

PETITION TO SUSPEND

The Common Carrier Bureau's Trial Staff in the above-captioned proceeding involving Transmittal Nos. 10989 and 11027 hereby requests that the Commission suspend for the full period permitted by statute and set for investigation the Message Toll Service (MTS) rates filed by American Telephone and Telegraph Company (AT&T) under Transmittal No. 12241. In support hereof, it is shown as follows:

1. The proposed MTS rates filed by AT&T on January 3, 1975, would, in many instances, supersede the MTS rates now subject to investigation in Docket No. 19129. Since there is, thus, a direct connection between the latest rate filing of AT&T and the issues in Docket No. 19129, the Trial Staff offers the following comments. In doing so, we do not intend to suggest that final disposition of this new filing should take precedence in terms of the primary interests of the rate paying public, the Commission, and the Bell System which

would best be served by concluding Phase II of Docket No. 19129 as soon as possible. The rate payers are entitled to have an early, definitive ruling on whether the costs for long distance, interstate, message service that they are paying are lawful. The Commission has a significant amount of its limited resources engaged in the Docket No. 19129 investigation, and the sooner these resources can be made available to the deplorably over-burdened Common Carrier Bureau the better. The Bell System has hundreds of millions of dollars subject to potential refund. Therefore, we urge that, in taking whatever action it deems appropriate with respect to Transmittal No. 12241, the Commission avoid any course which would significantly delay the resolution of those matters now at issue in Phase II of Docket No. 19129.

Overall Cost of Service

2. AT&T's assertion of need for additional net earnings in 1975 of $433 million is based on the expectation of spending levels that are unwarranted and may well not come to pass. Further, in these times of recession and inflation, the higher earnings objectives of AT&T are over-blown and contrary to the public interest.

3. The evidence of record in Docket No. 19129, Phase II, shows or will show the following inefficiencies, among others, in the Bell System's operations:

-Expenditures for maintenance are excessive

-Expenditures for traffic operations are excessive

-The reserve for depreciation is understated, thereby overstating the rate base

-Expenditures for plant (rate base) are excessive

We are not referring to small amounts. For example, Trial Staff Witness Dreher found a reduction in the Bell System's pension costs for 1973 of $290 million to be in order; Trial Staff Witness Mina has found over-investment in intertoll trunks of $573 million; and Trial Staff Witness Lipske has estimated that the deficiency in the system book reserve for depreciation is at least $3.1 billion. Since there is nothing in the new rate filing that would suggest that the Bell System has eliminated these excesses, the cost of service claims of AT&T must also be considered to be excessive.

4. AT&T has recently announced that the 1975 Bell System construction is being reduced by $600 million (AT&T News Release dated January 15, 1975). We also understand that a System-wide policy has been adopted to eliminate new hires which run at about 75,000 persons annually; and, while taking various steps to avoid direct lay-offs, there have been several significant reductions in force with more scheduled in the near future. Given these developments, no precipitous action should be taken to permit implementation of MTS rate increases based on the cost of service figures provided with the instant filing.

5. In 1974, the Bell System's profits were the highest ever. In the last three years, the earnings per share on AT&T stock, despite

inflation and the other economic woes this country has suffered, have risen 34%. To permit the Bell System to increase its return to as much as 11% must surely contribute to further inflation. Had the Bell System earned an additional $433 million on its interstate business last year, it would, indeed, have had an interstate rate of return of 11%, or nearly 28% more profit than actually earned. Coupled with the Bell System wage settlement last year which called for a 12% annual increase, both the owners of and the workers for the System would appear to be beating inflation, and, concomitantly, feeding it. But is this the leadership one would hope to expect from the country's (and the world's) largest corporate organization?

6. In addition to serious questions as to whether the rate of return sought by AT&T is, in fact, necessary to permit it to meet its capital requirements, there are also considerable doubts that the Bell System's capital acquisition program has been conducted efficiently. For example, the recently announced modification of the Dividend Reinvestment and Stock Purchase Plan to enable shareowners to purchase shares at a discount should be carefully scrutinized.

Inter-Service Subsidy

7. The cost data submitted by AT&T shows that, for the year ending August 31, 1974, the following services earned the following rates of return under the Method 1 cost allocation method:

Message Telecommunications Service	3.9%
Wide Area Telecommunications Service	12.3%
Private Line Telephone	5.5%
Private Line Telegraph	-0.4%
TELPAK	8.2%
Audio/radio	1.9%
Television	2.0%
Other	3.3%

It may be assumed that signals from the marketplace have indicated to AT&T that it can raise the WATS, Private Line Telephone and Telegraph, and TELPAK revenues by 7.2%. Since MTS is already subsidizing these other services taken as a whole, to suspend the proposed increase in the MTS rates and to permit the other increases to become effective would minimize, to some extent, continued subsidization by the MTS rate payers. MTS is earning at the upper end of the rate of return range last permitted by the Commission; however, these other increases should not bring the interstate earnings as a whole above that range.

Changes in Particular MTS Rate Elements

8. Attachment A hereto is an excerpt from the testimony of Trial Staff Witness Melody in Phase II of Docket No. 19129. Dr. Melody's observations were made in the context of the last two MTS rate changes by AT&T; however, they are equally applicable to

the presently proposed rate changes and are incorporated herein as an integral part of this pleading. The rate changes being proposed are major; yet, despite the references in Bell Statement 6 to costs, actual costs or estimates of actual costs by rate elements are once again not provided by AT&T. Instead, the incremental or current cost and revenue figures which are furnished do not permit a meaningful analysis of the probable full impact of these rate changes on the many customers who will be affected. Inasmuch as there has been considerable attention paid to the MTS rate structure issues in Phase II of Docket No. 19129, it would appear to be most efficient and expeditious to assign the similar questions raised by the new rate filing to Docket No. 19129.

ACCORDINGLY, for the reasons set forth above the Trial Staff respectfully requests that the Commission suspend the MTS rates filed by AT&T under Transmittal No. 12241, subject them to an investigation, and require AT&T to submit updated cost data which reflect all possible economies so that by the end of the suspension period lower rates can be substituted for those now proposed.

RESPECTFULLY SUBMITTED,

Peter M. Andersen

Louis C. Stephens

Ruth L. Baker

Attorneys for Trial Staff
Common Carrier Bureau

January 28, 1975
1229 - 20th Street, N.W.
Washington, D.C. 20554

ATTACHMENT A

Excerpt from Testimony of Trial Staff Witness Melody, Docket No. 19129, Phase II, Trial Staff Exhibit No. 28A, Pages 14-16.

B. Rate Structure Justification

My earlier testimony concluded that Bell has provided no basis for independent evaluation of its judgments in determine the proposed rate structure changes filed in Docket 19129. Selective cost data was used on occasion to indicate that a particular rate change is in the general direction of a certain cost figure. However, the establishment of rates in relation to costs is not a rate-making objective ot the Company. Further, apparent "Value of Service" factors provide an all-purpose justification for the selection of virtually any rate change that Bell might propose.

The LDI demand and INC cost models are basically aggregative models which attempt to assess aggregative cost and revenue consequences. Such models are not designed to provide a basis for evaluating alternative rate structures, or rate structure changes that might be implemented. Nor are they directed to the task of assisting in the selection of an optimum rate structure. Rather, they are designed to calculate the aggregate revenue and cost consequences of a previously selected rate structure. Demand and cost information relevant to the selection of the most efficient MTS rate structure is extremely sparse.

Even the selected cost and revenue information relating to selected components of the rate changes are subject to serious errors. For example, in Attachment D of the testimony of Mr. Betteridge, a revenue/cost relationship per message for dial station to station service from 0 to 55 miles is provided. Although, it is somewhat surprising that such a specific and detailed revenue/cost relationship can be provided in light of the absence of detailed information elsewhere, it must be recognized that this revenue/cost comparison is a meaningless one. The comparison attempts to relate "incremental cost per message" to "average revenue per message". Such a comparison of "incremental" cost with an "average" revenue figure attempts to compare apples and oranges. Obviously, incremental costs must be compared with incremental revenues, and average revenues compared with average cost in order to obtain useful revenue/cost comparisons. The comparison proposed in Attachment D is not an appropriate one for use in the design of an efficient rate structure.

Looking beyond the rate structure changes proposed in the Bell filing to the justification of the rate structure, in toto, we find that available information provides even less justification than that supplied in support of the specific rate changes proposed. Apparently, the basic form of the rate structure is justified primarily because it has been used over a long period of time. Such basic rate structure dimensions as the three-minute initial period, the use of 21 mileage bands, the use of a separate schedule for operator assisted traffic, apparently reflect only the impressionistic judgment of Bell management, and could just as easily have been significantly different. Yet, we note that if the rate structure were only modified in minor ways, it would involve a transfer of millions of dollars among groups of customers that use MTS.

BEFORE THE

A. 335

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

In the Matter of)
)
AMERICAN TELEPHONE AND TELEGRAPH COMPANY)
)
Revisions to Tariff F.C.C. Nos. 259,)
260, and 263 effective March 4, 1975.)
Transmittal No. 12241)

TO: The Commission

PETITION TO SUSPEND

Data Transmission Company (DATRAN), by its attorneys, hereby respectfully petitions the Commission, pursuant to Sections 4(i), 4(j), and 201-205, of the Communications Act of 1934, as amended, and Part 61 and Section 1.773 of the Commission's Rules and Regulations for suspension of the effectiveness of the above-captioned tariff revisions.

1. On January 3, 1975, the American Telephone and Telegraph Company (AT&T) submitted to the Commission a tariff filing seeking increased rates for its interstate services to be effective March 4, 1975. The rate adjustments are designed to produce a 7.2 percent net increase in AT&T interstate revenues amounting to $717 million per year. It is the largest increase ever sought by a common carrier before the Commission.

2. On January 6, 1975, AT&T, pursuant to the Commission's Memorandum Opinion and Order,[1/] submitted its

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1/ F.C.C. Order 74-1370, released December 16, 1974, establishing Docket F.C.C. No. 20288.

direct case in support of its five-city Dataphone Digital Service (DDS) rates, permitted by the Commission to go into effect on December 15, 1974. In addition to the reorganization of support materials provided the Commission in March, 1974, when AT&T petitioned for authority to operate facilities for DDS service, the January 6 submission addresses certain matters raised by the Commission in its December 16 Order.

3. The proposed AT&T 7.2 percent net rate increase includes, in part, a 7.8 percent increase in:

> "(a)ll domestic rate elements in Tariff F.C.C. No. 260 ... with the exception of the rates for Series 7000 services and for any items that were filed to become effective after September 1, 1974."2/

It appears, that with the exception of Series 7000 services, the only other major service excluded from the general rate increase is the Dataphone Digital Service which is offered pursuant to F.C.C. tariff No. 267.

4. Inconsistencies, both within and between these two recent AT&T submissions, constitute the basis for DATRAN's Petition to Suspend. AT&T asserts:

> "The proposed rate changes are the consequence of the extraordinary inflationary pressures that have been besetting the economy. The impact of this inflationary spiral, has been an escalation in the Bell System's labor costs and other operating expenses, a significant rise in the cost of construction needed to provide the plant and equipment required for service

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2/ Letter from James R. Billingsley, AT&T Vice President, to Richard E. Wiley, Chairman, F.C.C., dated January 3, 1975, attached "Summary of Rate Changes", at 10.

> to the public, and a dramatic upsurge in interest rates and the cost of capital."3/

Thus, inflation and its byproduct, according to AT&T, are the sole causes for the proposed substantial rate hikes.4/

5. No reasons appear to be afforded for exempting Series 7000 services from the proposed general rate increase. Moreover, DATRAN surmises that the DDS 5-city tariff rates (AT&T Tariff F.C.C. No. 267) have not been included within the proposed general increase because increased costs (most assuredly resulting from the same inflationary pressures which affect other services) were plugged into AT&T December, 1974, cost analyses5/ which essentially constitute a "recomputation" of DDS service-cost factors set forth in the March, 1974, AT&T submission herein.6/

6. Those same factors which allegedly necessitate a $717 million annual increase now in AT&T interstate revenues do not necessitate an increase in any amount in AT&T five-city DDS revenues. This is the only conclusion which can be drawn from an examination of the AT&T January 3 and January 6 submissions. Thus the same rate levels established by AT&T for

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3/ Billingsley Letter, at 1.

4/ It is significant to note, if only in passing, that there appears none of the usual AT&T allegations pertaining to the adverse impact upon AT&T revenues and rates of present and potential competition.

5/ Docket F.C.C. No. 20288, Bell Ex. No. 18.

6/ Docket F.C.C. No. 20288, Bell Ex. No. 2.

DDS service in March 1974 are appropriate today for such service, notwithstanding admitted significant and substantial economic influences which logically should drive AT&T's DDS prices upwards -- this, especially in light of AT&T's pronounced pricing policy objective

> "to select rates for its competitive services which yield as large a contribution above relevant costs as is practicable, taking into account market conditions and other ratemaking factors so that the users of other Bell System Services, particularly message telecommunications services, may be benefited and enjoy lower rates than they would otherwise be required to pay."7/

In another rate proceeding currently pending before the Commission,8/ which proceeding contains issues pertaining to rate revisions in AT&T competitive services, AT&T has stated that its pricing

> "policy is to establish rate levels which, in addition to being competitively effective, will yield an optimum contribution to earnings and thus benefit the users or other services .... An 'optimum' contribution is the largest contribution which is prudent or reasonably practicable, taking into account market conditions, rate relationships and other relevant ratemaking factors."9/

Thus, in the Hi-Lo proceeding, AT&T has characterized its pricing policy objective in terms of superlatives, i.e., "optimum" and "largest."

7/ Docket F.C.C. 20288, Bell Ex. No. 19, at 1-2, citing Bell Ex. No. 2, Part III, p. 1. (Emphasis added)

8/ Docket F.C.C. No. 19919, the "Hi-Lo" proceeding.

9/ Docket F.C.C. No. 19919, Bell Ex. No. 3, at 3. (Emphasis added)

7. AT&T simply will not derive the "optimum" or "largest" contribution through its 5-city DDS rates, or those DDS rates potentially applicable in nineteen additional cities. AT&T freely admits this.[10/] AT&T thus does violence to its pronounced pricing policy objectives and the burden, clear-cut in this case, falls largely upon captive monopoly users who are asked to pay substantially more in order for Bell to meet permitted interstate revenue levels. Monopoly users largely will bear the brunt of inflationary pressures felt by AT&T, and its DDS customers will escape rate increases even though AT&T offers no denial that inflationary factors affecting the firm do not discriminate between or among AT&T services.

8. Thus, in light of the above, the proposed revisions are unjust and unreasonable and are unjustly and unreasonably discriminatory. There simply is no alternative conclusion that can be drawn in the circumstances. AT&T's now clear objective in its instant tariff revisions to increase charges for service to its essentially captive monopoly users while, at the same time, not to increase DDS charges, constitutes unjust and unreasonable charges and unjustly

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10/ Docket F.C.C. 20288, Bell Ex. No. 19, at 3-4.

and unreasonably discriminatory rates under Sections 201(b)[11/] and 202(a)[12/] of the Act, respectively. In essence, $3.3 million is foregone in DDS revenues, which amount will be borne primarily by monopoly users.[13/]

9. For the reasons herein specified, DATRAN respectfully requests that AT&T's instant tariff revisions be suspended until a hearing can be instituted and completed

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11/ Which provides, in part: "All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful...."

12/ Which provides: "It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

13/ AT&T concedes that its "stated objective of choosing rates which yield as large a contribution as practicable would be better served by increasing [its DDS] rates." Docket F.C.C. No. 20288, Bell Ex. No. 19, at 4. (Emphasis added)

into the lawfulness thereof, or in the alternative, for the full three-month period specified in Section 204 of the Act, subsequent to which an accounting order should attach.

Respectfully submitted,

DATA TRANSMISSION COMPANY

By: /s/ Kevin H. Cassidy
Kevin H. Cassidy

By: /s/ Walter J. Walvick
Walter J. Walvick

By: /s/ Donald J. Elardo
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Its Attorneys

Of Counsel:

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Vienna, Virginia 22180

Dated: January 28, 1975.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	Transmittal No. 12241
Revision of American Telephone and Telegraph Company tariffs FCC No. 260 et al for interstate services.	)	

TO: The Commission

PETITION FOR SUSPENSION

The Intermountain Network, Inc., by its attorneys, hereby petitions pursuant to Section 1.773(a) of the Commission's Rules and Regulations to suspend the proposed revisions of AT&T Tariff No. 260 filed January 3, 1975 (Transmittal No. 12241), for the full three months' statutory period. It is requested that the Commission institute a rate investigation into the proposed tariff changes and, pursuant to Section 204 of the Communications Act of 1934, as amended, order an accounting of all revenues collected under the proposed tariff rates should they eventually become effective.

The Intermountain Network, Inc., (hereinafter "IMN") is a network organization which provides interconnected program services to 86 affiliated AM stations in a total of 86 communities in the Intermountain West. Its system comprises over 6,000 route miles. The IMN facilities have

also been dedicated to provide National Level distribution channels to the Emergency Broadcast System.

IMN provides a wide variety of program services to its affiliates. It originates three daily state wide newscasts in each of the states of Utah, Idaho, Montana, Wyoming, Colorado, New Mexico, Nevada, Arizona, North Dakota, South Dakota and Nebraska. In addition, it originates regional newscasts for broadcast by its affiliates.

IMN is a customer of AT&T and its affiliated companies for all of the lines required to supply regular network services to its affiliates. For a more detailed discription of its operations, reference is made to the IMN Petition filed October 17, 1969 with reference to AT&T Transmittal No. 10596. IMN was a party to the rate investigation in Docket No. 18684.

As IMN showed the Commission in its submissions with respect to AT&T Transmittal No. 10596 the economic basis for network radio interconnection in the Intermountain States contains elements of extreme elasticity of demand. There is a limit in the extent to which increases in AT&T Series 6000 line charges can be passed through to IMN affiliates or absorbed by IMN itself. The result of increases beyond the ability of the Network and its affiliates to absorb the same must inevitably be a contraction in the size of the Network and the number of stations able to receive its services. The necessary ultimate result of any such contraction is an impairment of the ability of the public in

a large area of this country to receive current national and regional news and public affairs programs.

IMN has not been able to complete in the 25 days since the proposed rate revisions were filed a detailed analysis of the total impact of this proposal on it or on its affiliates. Nevertheless, it is believed that such impact will be substantial. IMN is principally a user of Bell's monthly Series 6000 service. The average Interexchange Channel rate for such service is to increase by 7.85 percent. The average Station Connection charge will increase by 8.0 percent. IMN estimates that the total increase in charges for Series 6000 services which it will have to pay to the telephone company will amount to approximately 7.6 percent overall.

This increase in rates must be viewed in the context of the substantial increase in Series 6000 rates which was placed in effect as of September 1, 1970 (see Order, released July 7, 1970, FCC 70M-941, Docket No. 18684) and the enormous increases in costs which have occurred since that time. While it is to be acknowledged that the Bell costs have increased, too, that such increases justify an almost 8.0 percent across the board increase in Series 6000 rates cannot be assumed. Bell's costs and rate making procedures must be the subject of a statutory investigation.

WHEREFORE, the premises considered, it is requested that the proposed rates for Series 6000 services be

suspended for three months, and that an investigation be instituted as to their lawfulness. It is further requested that an accounting order be issued herein.

Respectfully submitted,

THE INTERMOUNTAIN NETWORK

By Haley, Bader & Potts

1730 M Street N.W.
Washington D.C.20036

William J. Potts, Jr.

Its Attorney

January 28, 1975

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A. 346

BEFORE THE

Federal Communications Commission

In the Matter of American Telephone)
and Telegraph Co. Tariff Filing)
Seeking Increased Rates for) Transmittal No. 12241
Interstate Services set Forth in)
FCC Tariff Nos. 259, 260 and 263)

To: The Commission

PETITION FOR SUSPENSION AND INVESTIGATION

Pursuant to Section 1.773 of the Commission's Rules and Section 204 of the Communications Act, Mutual Broadcasting System, Inc. ("Mutual"), by its attorneys, hereby petitions the Commission to suspend the effective date of the above-captioned tariff filing for a period of 90 days, and to expeditiously institute hearing proceedings to investigate the validity of the proposed rate increases. In support of this petition, Mutual sets forth the following:

Introduction

1. Mutual Broadcasting System, Inc. operates one of the four national radio networks. In terms of number of affiliates, Mutual is the largest of the four national networks, having almost 700 affiliate stations. Mutual's programs are fed to its system of affiliates via AT&T interstate private line facilities (Series 6000 audio channels). Although Mutual is also an extensive user of AT&T MTS facilities, the instant petition is primarily directed to AT&T's proposed increase in private

line rates; however, the arguments set forth herein are, for the most part, applicable to the proposed tariff increases in both private lines and WTS facilities.

2. AT&T has requested a 7.2% increase in interstate revenues which it projects will result in an annual increase in gross revenues for 1975 of approximately $717 million (approximately $433 million net revenues after taxes); approximately $73 million of this revenue increase would be attributable to private line services. Mutual estimates that this proposed rate adjustment would increase its interstate private line charges for monthly and occasional service by approximately $12,200 per month or over $146,000 a year. In this regard, Mutual currently pays AT&T approximately $1.9 million a year for audio program transmission services and facilities.

Primary Purpose of Rate Increase is to Substantially Increase the Rate of Return on Invested Capital

3. AT&T has premised this request for rate increases on the necessity to 1) meet increases in operating costs brought about by "extraordinary inflationary pressures" besetting the economy and 2) increase the rate of return on invested capital to 10-1/2 - 11% so as to attract necessary debt and equity capital in the marketplace and to "sustain the financial integrity of the Bell System."

4. There is little reason to doubt that AT&T, just like any other company in today's inflationary economy, is experiencing some increases in operating costs due to

escalation in wages, interest costs, construction and maintenance costs, etc. However, unlike many companies, AT&T appears to have been more than able to off-set increased expenses by increased revenues. In fact, for the twelve month period ending November 1974, earnings per share increased to $5.33 per share for a 10.7% return on stockholder equity; furthermore, as the statement of Robert H. B. Baldwin of Morgan Stanley and Company makes clear, during the past 5 year period, AT&T earnings have consistently increased (averaging 3.9% over the last five year period) and have, in fact, resulted in an average return of 9.7% on stockholders' equity. Thus, it can hardly be said that AT&T is suffering from a cost-price lag as are, for example, many of the electric utilities and other regulated industries.

5. Accordingly, it is clear that the primary purpose for the proposed rate increase is to achieve a substantial increase in the rate of return on AT&T's invested capital. As such, the justifications advanced by AT&T for an increased rate of return must be closely examined to determine their reasonableness. It is submitted that a critical evaluation of those justifications cannot support a rate increase of the magnitude proposed by AT&T.

AT&T Capital Requirements May be Subject to Significant Initial Downward Adjustments as a Result of New Economic and Tax Proposals and Slowing of Customer Demand

6. AT&T's rate increase is premised on the projected need to raise approximately $4 billion per year in external

financing - either through issuance of debt instruments or equity stock - to supplement retained earnings so as to continue to meet its requirements for new construction. However, subsequent to the filing of its rate request, President Ford proposed an economic and tax program which, if implemented by Congress, could significantly reduce AT&T's capital requirements. Specifically, President Ford proposed to lower the corporate income tax rate from 48% to 42%, increase the present 4% investment tax credit for utilities to 12% in 1975 and 7% thereafter, and increase the amount of the investment tax credit which may be used to offset income tax. Although it is unreasonable to presume that all of these economic and tax proposals will be implemented without modification, it is equally reasonable to presume that some economic and tax relief will be extended to industries in general, and AT&T in particular, during this year. Consequently, the uncertainty alone of this new economic and tax relief and its effect on AT&T's capital requirements would appear to justify a suspension and investigation of AT&T's rate increase.

7. Furthermore, it is also noted that in view of slower growth in customer demand due to current economic conditions, AT&T recently cut back the projected external capital requirements of its construction program in 1975 from $4.1 to $3.5 billion dollars which will also ease AT&T's burden of raising new capital.

AT&T's Increase in Overall Rate of Return is Unreasonable and Unjustified and Must be Rejected

8. Since the Commission's 1972 rate decision (Phase I), which authorized AT&T an 8.5% rate of return, AT&T has increased its proportion of debt from 45% to approximately 49% of total capitalization. Furthermore, as a result of unusually high interest rates over the past year, AT&T's cost of embedded debt has increased from 6.0% in 1972 to a present level of 6.8%. In this regard, AT&T projects that long-term debt rates will be between 8 and 10% for the foreseeable future and that short-term rates will range between 7 and 12%, resulting in an average increase in embedded debt cost from 6.8% to approximately 7.0%.

9. AT&T's projections on the cost of debt and the effect on embedded cost of debt appear to be reasonable. In this regard, it is noted that on January 28, 1975, AT&T will reissue a $600 million offering of new notes and debentures which it withdrew from sale last November because of a government antitrust suit. The yield on the seven-year notes is expected to be much lower than the 8.17% offered in November due to the drop in short-term interest rates; however, the yield on the 32-year debentures may be increased slightly above the earlier 8.67% yield due to a slight rise in long-term interest rates.

10. It would also seem reasonable to assume that AT&T's present proportion of debt to total capitalization will neither substantially increase from the current level of approximately 49% -- especially in view of the current level of coverage of fixed interest charges -- nor will the proportion of debt to total capitalization substantially decrease from its present level in view of the current market price of AT&T's common stock which is below book value. Thus, assuming that invested capital is composed of 49% debt at an embedded cost of 7.0%, the proportion of the overall rate of return attributable to invested debt would be 3.43% -- an increase of .73% over that proportion of total cost of debt from the 1972 level.

11. AT&T maintains that the minimum return on stockholder equity that is required in today's marketplace is in the range of 12-3/4 - 13-1/2 percent; Mr. Robert H. B. Baldwin of Morgan Stanley and Company even goes so far as to state that the minimum rate of return should be 15%. Indeed, based on the projections as to the return on debt as a proportion of total rate of return set forth in paragraph 10 above, it would appear that, in fact, the proposed interstate rate increase would embody a minimum 13.8% rate of return on total equity. This rate of return on equity is based on a 10.5% rate of return on capital and is derived as follows:

Item	Proportion of Capital (Percent)	Cost Rate (Percent)	Proportion of Total Cost
Debt	49	7.0	3.43
Total Equity	51	13.8	7.07
Total Cost or Rate of Return			10.5%

Thus, that portion of the total cost of capital attributable to return on equity would be increased by approximately 1.29% over that proportion permitted in the 1972 decision.

12. The reason AT&T has proposed to increase its stockholders' rate of return on equity by such a substantial amount is simple: AT&T wants to sell new equity capital. However, in spite of steady increases in rate of return on existing equity as well as consistent increases in dividends, AT&T common shares are selling in the $47 range when book value of those shares is in excess of $51.00 a share. AT&T maintains that to sell additional equity stock at below book value would not be "fair" to existing investors since this would dilute the value of their present stockholdings. Furthermore, an immediate and massive increase in rate of return on equity is needed to drive the market value of AT&T stock common above $52 so that holders of $1.6 billion in debentures can exercise their warrants prior to the expiration date of May 15, 1975 to purchase AT&T common at $52.00 per share.

13. Inasmuch as AT&T common stock has generally reflected a consistent growth in rate of return and dividend

payments, the current depressed market value of AT&T common would appear to be not so much a reflection on the risk element and overall quality of the stock as it is a reflection of the general state of the economy. In effect, then, the real rationale for this proposed rate increase is that AT&T is seeking to have the ratepayer finance a premium rate of return on stockholder equity so as to guarantee its shareholders' investment and to remove any element of risk from the purchase of AT&T common stock and warrants. Such a shifting of risk would be to the financial interest of the AT&T stockholders and warrant holders and would insulate AT&T from shareholder concern over the current depressed market value of its stock; furthermore, such a shifting of risk to the ratepayer would be of therapeutic benefit to AT&T since it could put aside any fears, real or imagined, that its bonds would be downgraded from their present Triple A rating. Such a blanket shifting of risk to the ratepayer, however, would not be in the public interest.

14. AT&T attempts to endow its proposed increase in rate of return with some respectability through reference to the rates of return presently being offered by electric utilities to its stockholders. However, any inference that the risks and quality of AT&T common stock are comparable to those of most electric utilities must be rejected out-of-hand. Unlike AT&T, many electric utilities are being faced

with severe cost-price lags due to the tremendous increases in fuel costs and the extraordinary initial investment (in proportion to overall rate base) required to bring on line nuclear reactors and other generating facilities as well as associated pollution control equipment, which by nature is non-productive in terms of increasing plant efficiency. Finally, in most cases, the debt-equity ratios and associated coverage of fixed interest costs - the risk factors - of electric utilities insures that a high premium must be paid to attract equity capital.

15. The best that can be said for AT&T's proposed increase in rate of return is that some modest upward adjustment may be justified to compensate for the increase in debt as a proportion of total invested capital and the increase in embedded cost of debt. However, AT&T has certainly not submitted adequate justification to increase the rate of return to the extent proposed.

Even If the Rate Increase Could be Justified, AT&T Should Not be Entitled to any Increase in Series 6000 Rates until Such Time as the Quality of Service is Improved*/

16. Over the years, tremendous developments have occurred in almost every aspect of communications technology. During this period, important advances have been made in

*/ The proposed rate increases for Series 6000 channels for which Mutual specifically seeks suspension, are set forth at pages 104 through pages 112 of Tariff FCC No. 260 issued on January 3, 1975 by AT&T.

the equipment and facilities of most services supplied by AT&T and major new services have been developed as well. Examples of these improvements include: direct dialing to almost any point in the country, extended area dialing, WATS, Dataphone, Telpak, Digital Data Service, new and improved telephone instruments and switchboard equipment, use of microwave and coaxial cable for inter-city transmission, satellite communications services, automatic alternate routing for peak load equalization and many others. Furthermore, these better quality transmissions and new services have generally been accompanied by a reduction in rates.

17. While AT&T has been making these technical advances and providing new services, the broadcaster and the manufacturers of broadcast audio equipment have not been idle. Solid state equipment has been developed; integrated circuitry is used wherever possible; FM and stereo broadcasting is well accepted; tape recorders are in general use; wider band, more stable and flexible studio control consoles are employed; improved transcription turntables and pickup heads are standard equipment -- all of this reflecting the tremendous advances that have been made in the broadcast and recording industries. These improvements, coupled with better microphones, help to produce wideband sound that is distortion-free to such an extent that it is hard to distinguish the transmitted sound from the original.

18. As a result of the development of new broadcast equipment, Mutual and the other radio networks can produce high quality sound in the studios, but often they are unable to deliver this quality to affiliates throughout the country. Hardly a single Mutual affiliate meeting goes by without a complaint being raised about the quality of network program transmission facilities. Indeed, within the past year, complaints from Mutual's West Coast affiliates in the States of Washington, Oregon, California, Arizona and Nevada reached such proportions that Mutual has been and still is conducting random tests at different locations on its Pacific network to determine whether its interstate program transmission lines are meeting the specifications AT&T agreed to provide Mutual.

19. These tests on Mutual Pacific's facilities determined that there were major and widespread deficiencies in the areas of gain frequency response, noise, harmonic distortion, and unexplained outages. For example, AT&T agreed to provide Schedule A program transmission lines to Mutual within the following specifications: ±3db gain frequency response and 44 db signal to noise ratio. Mutual test results, however, which will be made available to the Commission or other interested parties on request, showed gain frequency response fluctuating between +2 and -32.5 and signal to noise ratio of -45db on program transmission lines serving its affiliate in Seattle, Washington.

20. Only now, after countless complaints to AT&T and months of inferior and unacceptable service, is Mutual beginning to see some improvement in the quality of program transmission facilities being furnished to it on the West Coast. Although Mutual's network tests were restricted to problems on the West Coast, there is every reason to believe these problems are not unique to Mutual's Pacific network. In this regard, it is generally recognized within the radio broadcast industry that audio program transmission services have been AT&T's "stepchild," so to speak, with little attention being paid to improvements. The AT&T specifications for audio program transmission services have changed very little over the years. In many areas of the country, AT&T's equipment and facilities appear to be the same today as they were many years ago; this at least would explain the poor quality of service being provided to Mutual Pacific.

21. It is incredible that AT&T would suggest that the proposed rate increase would permit it to provide high-quality service to its customers. On the contrary, Mutual has observed a total lack of significant improvement in AT&T's plant and facilities for audio program transmission. Historically, it has been our experience that rate increases have not been followed by improvements in quality of service. It is

particularly depressing to find that, frequently, a request for service is met with the assessment by AT&T of "special construction" charges -- the existence of these special construction provisions in the private line tariff weakens the force of AT&T's claim that the rate increases are required in part for capital improvements. In sum, we have a situation in which the service provided by AT&T has been constantly deteriorating and AT&T's response has been to propose rate increases rather than improvement of service which would be designed to increase rather than decrease its market place.

Technical Specifications for Quality of Customer Service Should be Included in Interstate Private Line Tariff

22. In sum, during an era of tremendous developments in every facet of audio reproduction -- from the L.P. record to stereo broadcasting to solid state equipment to four track sound -- AT&T's program transmission service has shown little, if any, change. Considering the millions of people throughout the country who would be the beneficiary of any such improvement, Mutual suggests that one of the principles which should guide the Commission in its investigation of

AT&T's proposed interstate rate increase is a genuine concern for providing better audio program transmission service at lesser cost -- something which has been experienced in most other areas of AT&T operation.

To this end, Mutual would like to propose that AT&T be required by the Commission to adopt and include in its private line tariff the following specifications for Schedule A and C audio program transmission facilities:

Signal to noise ratio: 48 db unweighted

Gain/freq. response, 6005 (A):
100-5000 ±2 db within 3db envelope

Gain/freq. response, 6003 (C):
100-3000 ±2 db within 3db envelope

Harmonic Distortion: less than 3% at any frequency or level up to +18 dbm

Gain stability within 24 hour period: ±2db

No discernable crosstalk, impulse noise or sing under critical listening condtions.

Frequency shift: 2 cycles maximum

Compander Tracker: ±1 db using 400 tone at test levels of +8 to -30 dbm

Program Level: +8 db with a peak program level of +18 dbm before clipping.

Envelope delay: 5 msec at 5khz, 20 msec at 100 hz referred to frequency of minimum delay

Level delivered to customer at receive end: between -15 and -20 dbm into 600 Ohms.

Test signal power: not to exceed +8 dbm for continuous periods.

24. Furthermore, the Commission should also require AT&T to provide in its private line tariff a schedule of refunds to customers when it fails to meet the above suggested specifications or similar specifications. The ratepayer should not be required to pay for a quality of service which he does not receive.

Conclusion

The proposed increase in rates is substantial and, if adopted, Mutual's network operations would be seriously affected by this additional cost-price squeeze during this inflationary period. In this regard, it should be noted that unlike the other three radio networks with which it competes, Mutual does not own and operate any AM, FM or TV stations. Nor is Mutual engaged in television network operations. Mutual's entire income comes from the operation of its radio network. Since the largest single operating expense of its network consists of charges for AT&T audio transmission facilities, an increase of the magnitude proposed would have a deleterious effect on its ability to provide service to its affiliates and to effectively compete with the other radio networks; such a result might curtail service to the public and would not be in the public interest.

For the above reasons, Mutual Broadcasting System, Inc. submits that the proposed 7.2% increase in interstate rates in general has not been justified by AT&T. Furthermore,

with respect to the Series 6000 audio program transmission facilities, even if AT&T could justify a rate increase, such increase should be denied until such time as it substantially improves the quality of its audio program transmission services and facilities. The Commission should suspend the proposed rate increase for the maximum period of 90 days and institute an expedited hearing to investigate the reasonableness and justifications for these proposed rate increases.

Respectfully submitted

MUTUAL BROADCASTING SYSTEM, INC.

By _____
Roy R. Russo

_____
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Cohn and Marks
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January 28, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	Transmittal No. 12241
	)	
Revisions of Tariffs F.C.C. Nos. 259 (WATS), 260 (Private Line) and 263 (MTS)	)	

To: The Commission

PETITION FOR INVESTIGATION, SUSPENSION AND ACCOUNTING

National Data Corporation ("National Data"), pursuant to Section 204 of the Communications Act of 1934, and Section 1.773 of the Commission's Rules, hereby petitions the Commission to suspend for three months the proposed revisions of American Telephone and Telegraph Company ("AT&T") Tariffs F.C.C. Nos. 259, 260 and 263, filed on January 3, 1975, by AT&T Transmittal No. 12241 and to order a hearing for the purpose of investigating the lawfulness of such revisions. National Data further petitions the Commission to seek from AT&T a voluntary

deferral of the effective dates of the tariffs, beyond the three months suspension period, and to order an accounting if the revisions should go into effect prior to a final determination of their lawfulness.

In support whereof, the following is shown:

National Data's Interest in the Proposed Tariff Revisions.

1. National Data operates a nationwide real-time computer system which has the capability of providing customers with information by the use of any standard telephone within the continental United States. The system, which is operational 24 hours per day throughout the year, is used among other things for the purposes of credit card charge authorization, check verification, bank deposit reporting, hotel and motel reservations, product and merchandise ordering, warranty verification, invoicing and inventory control.

2. National Data's central computer facilities are located in Atlanta, Georgia, and are linked by AT&T private lines to regional communications centers in Georgia, Illinois, Nevada, New Jersey and Toronto, Canada. These regional communications centers are staffed with specially trained operators ("formatters") who translate voice communications received by telephone into data transmissions by use of cathode-ray tube input-output

devices. The data is then transmitted over leased high-speed data lines to the central computers in Atlanta and responses are transmitted back to the formatters and displayed on the cathode-ray tube for relay back to the customer by telephone.

3. Customers gain telephone access to the system primarily by use of wide area telecommunications service (WATS). By calling a local or WATS number from any location in the continental United States and Canada, the customer is placed in voice communication with a formatter at one of the regional communication centers. The formatter speaks to the customer and converts the information given by the customer into a format suitable for entry into the computer or for querying and retrieving information from the computer.

4. National Data also has developed and tested a point-of-sale terminal system presently consisting of several hundred terminal devices in merchant locations throughout the country which are linked by AT&T private lines to the central computers in Atlanta. The point-of-sale terminals, using AT&T private lines, perform many of the same functions that are now accomplished through the WATS network.

Impact of the Proposed Tariffs on National Data: $565,000 Increase in WATS Costs.

5. It is the proposed Full Business Day WATS rate

revisions that most seriously affect National Data. In terms of the volume of calls made, National Data is one of the largest users of WATS service in the nation and for the calendar year ending December 31, 1974, it paid to AT&T and its affiliates approximately $2,500,000 for inter and intra-state WATS service. Based on charges for WATS for the month of December, 1974, the net impact of the proposed tariff on National Data will be an increase over current interstate WATS communications costs of approximately 25.8 percent or approximately $565,000 per year. Moreover, this constitutes an aggregate 37.9 percent increase over WATS charges paid by National Data prior to July 1, 1974, the effective date of the WATS tariff charges now being investigated in Docket 19989 of which National Data is a participant.

6. One of National Data's principal reasons for opening its regional centers was to obtain nationwide WATS coverage at lower cost by use of WATS access lines concentrated in the less expensive lower-numbered service areas. As can be seen from Attachment "I" of Bell Statement 6, it is precisely the lower number service areas* in which almost the entire AT&T proposed WATS

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* i.e., service areas 1 and 2. Depending on the geographic location of the particular National Data WATS center, Service Areas 1 and 2 encompass Rate Steps 1-8 on Attachment "I".

increase falls. Full Business Day WATS lines, which constitute the vast majority of National Data's WATS lines, are hit even harder than Measured Time WATS. For example, in Rate Step 1, the Full Business Day increase is 34 percent whereas the Measured Time is only 24 percent.

7. If the proposed WATS tariff goes into effect, the savings resulting from use of lower numbered rather than higher numbered service areas will be diminished to the point that maintaining all of the regional centers might no longer be cost justified, and National Data would have to seriously consider closing one or more of the regional centers and consolidating its operations. One undesirable result of any such consolidation would be the unemployment that would be created.

8. National Data has substantial communications costs for private line services as well as for WATS, and the proposed increases in rates for such services, though less drastic than the WATS rate revision, significantly affect National Data. National Data uses private lines to reach its regional communications centers and also for its newly developed point-of-sale terminal project, discussed above in paragraph 4. Its costs for interstate private lines is approximately $19,000 per month, and under the proposed tariff revision,

this cost would be increased by 7.4 percent to almost $20,500 per month. National Data will have to attempt to pass on any increased WATS or private line communications costs to its customers, who in turn undoubtedly will pass the costs on to the consuming public in terms of higher prices for services and products. In these economic times, such inflationary pressures are particularly undesirable.

Unlawfulness of the Proposed Tariffs.

9. National Data believes the proposed tariffs are unlawful in two respects: first, with respect to tariffs 259, 260 and 263, the increase in the rate of return sought by AT&T, as reflected by the 7.2 percent increase in revenues that would result from the implementation of the proposed tariffs, is unreasonable and in violation of Section 201(b) of the Communications Act; second, the increase in the MTS and WATS tariffs are unduly concentrated in the short haul rate steps and therefore are discriminatory and in violation of Section 202(a) of the Communications Act.

10. National Data has not yet had an opportunity to peruse all of the materials (some 8400 pages) filed by AT&T. However, the professional staff of the Council on Wage and Price Stability (the "Council"), a federal agency charged with the responsibility of monitoring

the inflationary impact of activities in both the private and public sectors of the economy, has had such an opportunity, and in its petition for suspension and investigation filed with the Commission on January 23, 1975, the Council adopted the position that the AT&T filing does not justify the increase in the rate of return sought by AT&T. National Data concurs in that position.

11. The Council not only believes that the requested rate of return is not adequately justified, but also asserts that the rate structure (i.e., the categories of charges in which the particular increases fall) must be carefully scrutinized before being implemented.

12. National Data agrees with the Council on the need for such scrutiny.* Attachment "A" to Bell Statement 6 indicates that while AT&T is seeking an average 7.3 percent increase in revenues from WATS, most of the increase falls in the lower numbered service areas in which Full Business Day rates increase by as much as 34 percent. Thus, the revision of Section 3.4.2 of the WATS tariff establishing rates for service areas 1 and 2 constitutes

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* However, National Data notes that the Council's estimate in footnote 9 of its petition that WATS users' rates will increase only 7 percent overlooks those WATS users whose lines are concentrated in the lower numbered service areas.

an unlawful discrimination against users such as National Data whose WATS access lines are concentrated in the lower numbered service areas.

13. AT&T has adopted a domino theory as its rationale for justifying the increases for Full Business Day WATS in the lower numbered service areas. In Bell Statement 6, Description of Interstate Rate Adjustments and Basis of Ratemaking Employed, at pages 22-25 AT&T states that the Full Business Day WATS rates in the lower numbered service areas were increased in order to maintain the rate relationship with Measured Time WATS; that Measured Time WATS in turn was revised to maintain its rate relationship with MTS; and that for cost reasons MTS rates were being raised for short haul calls. Accordingly, if AT&T is unable to justify its rate increase for short haul MTS, it will be unable to justify the rate increase in the lower numbered service areas for Measured Time and Full Business Day WATS. Moreover, even if AT&T were able to justify its rate increase for MTS for short haul service, the Full Business Day WATS increase in lower numbered service areas would not be justified if it were shown that AT&T's methodology were incorrect insofar as establishment of "equivalent MTS charges", (see page 23 of Bell Statement 6) or if the crossover points between Measured Time and Full Business Day WATS

shown in Attachment "J" to Bell Statement 6 had been inappropriately established.

Need for Suspension of the Tariffs and for Voluntary Deferral by AT&T.

14. In view of the size of the increase sought by AT&T and the impact the tariff revisions would have on individual and small and large businesses throughout the country, it is likely that the Commission on its own motion will suspend the effective dates of the tariffs even if no parties filed a petition to suspend. However, a 90 day suspension will be of only limited value since any investigation and hearing on the requested increase will take place over a prolonged period of time. Accordingly, the Commission is urged to seek from AT&T a deferral of the effective dates of the tariffs until such time as their lawfulness can be determined after an investigation and hearing.

WHEREFORE, National Data petitions the Commission:

(1) To suspend for a period of three months commencing March 4, 1975, the proposed effective dates of the tariff revisions pursuant to Section 204 of the Communications Act;

(2) To order an investigation and hearing pursuant to Section 204 of the Communications Act into the lawfulness of the charges and classifications contained in the

tariff revisions;

(3) To request AT&T to voluntarily defer the effective dates of the tariff revisions until such time as the lawfulness of the revisions has been determined; and

(4) To require AT&T, if the tariff revisions become effective prior to a final determination of its lawfulness, to keep accurate account of all amounts received by reason of the increase effected by the tariff revisions, specifying by whom and in whose behalf such amounts were paid, such portion of these increased charges as are determined to be unlawful.

Respectfully submitted,

NATIONAL DATA CORPORATION

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Dated: January 28, 1975

Before the
Federal Communications Commission
Washington, D.C.

RECEIVED BY FCC
MAIL BRANCH ON
JAN 30 1975

In the Matter of

American Telephone and Telegraph Company
1975 Interstate Rate Increase

Transmittal No. 12241

RECEIVED
JAN 31 1975
CHIEF, COMMON CARRIER BUREAU

Petition of the
National Small Business Association

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President
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RECEIVED
FEB 3 1975
TARIFFS BRANCH

Date: January 28, 1975

COMMON CARRIER BUREAU
JAN 31 1975
TARIFFS AND SERVICES
DIVISION

Before The
Federal Communications Commission
Washington, D.C.

In the Matter of
American Telephone and Telegraph Company
1975 Interstate Rate Increase

Transmittal No. 12241

Petition for Suspension and Investigation

The National Small Business Association hereby petitions the Federal Communications Commission (the "Commission") for suspension and investigation of the 1975 Interstate Rate Increase ("Rate Increase") filed by the American Telephone and Telegraph Company ("AT&T") on January 3, 1975.[1/]

The National Small Business Association herewith, in view of repeated references to the serious impact which the proposed application will have on the nation's small businesses, urgently requests of the Commission:

1. that it extend the time for filing petitions for intervention for at least 45 days from this date;
2. that it request of AT&T the filing of special information summarizing the anticipated impact of the proposed rates on large

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1/ This petition is filed pursuant to Section 204 of the Communications Act of 1934, 47 U.S.C. 204 and Section 1.773 of the Commission's Rules of Practice and Procedure, 47, C.F.R. 1.773.

and small business users with respect to: (1) Long Distance Message Telecommunications Service (MTS), furnished within the United States (except Hawaii and Alaska) and between the United States (except Hawaii and Alaska) and Canada and Mexico; (2) Wide Area Telecommunications Service (WATS); and (3) Private Line Service. 2/

2/ AT&T's proposed rate revisions affect the following FCC tariffs: Nos. 259, 260, and 263.

Respectfully submitted,

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John E. Lewis
Executive Vice President
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Herbert Liebenson
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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
and the Associated Bell System Companies

Charges for Interstate Telephone Service,
Transmittal No, 12241

PETITION FOR SUSPENSION BY COMMONWEALTH OF PENNSYLVANIA

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January 28, 1975

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
and the Associated Bell System Companies

Charges for Interstate Telephone Service,
Transmittal No. 12241

PETITION FOR SUSPENSION
BY COMMONWEALTH OF PENNSYLVANIA

Commonwealth of Pennsylvania, by its Attorney General, submits this protest and petition for suspension of tariffs filed by the Bell System which seek substantially increased rates for interstate long-distrance message telecommunications service (MTS), Wide Area Telecommunications Service (WATS), and Private Line Service. These rates are published to become effective March 4, 1975.[1/]

It is requested that the operation of these tariffs be suspended. Upon such suspension, an investigation should be instituted with the opportunity for public hearings, in the event the present investigation in Docket No. 19129 is deemed not to embrace these new increases.

The substantial nature of these interstate increases may be illustrated by the rates between Washington, D.C. and Philadelphia, Pa. The present Operator Station-to-Station rate is 85 cents for the initial 3-minute period. This is proposed to be raised to $1.45. The present Operator Person-to-Person charge between Washington, D.C. and Philadelphia, Pa. is $1.30.

1/ U.S.-Mexico and U.S.-Canada MTS would take effect March 29, 1975.

This would be increased to $2.00 under the proposed tariff. In general, the rate changes would disproportionately impact most heavily upon short-distance calls.

The principal justification advaced for these drastic increases is the stated need to lift AT&T's rate of return from apx. 8.5% to a higher 10.5%-11.0% levels.

Pennsylvania businesses and citizens would be harmed by the proposed increases. By virtue of the parity maintained by intrastate long-distances charges with the interstate level approved by the F.C.C., charges for services solely within Pennsylvania would be increased, also effective March 4, 1975, unless the F.C.C. suspends these charges for interstate services. For example, the Philadelphia-Pittsburgh long-distance rates would be increased. This parity has received judicial sanction by Pennsylvania courts and the U.S. Supreme Court. See: Bell Telephone of Penna. v. Public Utility Comm'n, 5 A. 2d 410, aff'd 309 U.S. 30 (1940), and Commissioner Johnson's separate expression in A.T.&.T., 38 F.C.C. 2d 213, 273 (1972).[2/]

The magnitude of the increase is staggering. We request suspension. AT&T estimates the new rates would produce $717 million in additional interstate revenue, and would net $433 million after taxes and other adjustments. These figures are on a national and annual basis. By simultaneous filings, Bell of Pennsylvania has proposed the identical increases for traffic solely within Pennsylvania, which would result in an additional $52.5 million net solely for intrastate Pennsylvania business.

2/ This decision is undergoing judicial review in the U.S. Court of Appeals for the District of Columbia Circuit. Commonwealth of Pennsylvania is an intervenor and participant in those proceedings.

We have examined the request for suspension filed by the Council on Wage & Price Stability. We likewise urge that the level of the charges warrants careful investigation and scrutiny. Moreover, the heavy emphasis on short-distance messages is particularly damaging and injurious to Pennsylvania because of the parity maintained between the Pennsylvania intra-state charges and the interstate charges.

Pennsylvania is the third largest State in the nation. It has a distinct interest in the level of telephone rates for itself as well as for the public of Pennsylvania.

The proposed increases come at a time when AT&T's cost for funds has been dramatically dropping. Thus, although the AT&T request is predicated upon high interest costs, in actual fact such interest rates are falling. See: New York Times, A.T.&T.'s Notes Will Yield 7.75%, January 28, 1975. Failure to suspend the proposed rates may unleash inflationary pressures. A comparable situation occurred in January, 1973, when the F.C.C. announced dramatic increases in long-distance rates for the Bell System. We suggest such an occurrence should not be repeated.

CONCLUSION

The Commission should suspend the proposed rates, and institute an investigation with public hearings prior to the effectiveness of the tariffs.

Respectfully submitted,

Respectfully submitted,

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Washington, D.C. 20036

Attorneys for Commonwealth of
Pennsylvania

January 28, 1975

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the following by first class mail postage-prepaid.

W.E. Albert
Administrator Rates & Tariffs
AT&T Long Lines
32 Avenue of the Americas
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Chief, Common Carrier Bureau
1919 M Street, N.W.
Washington, D.C. 20554

Chief, Tariffs & Service
1919 M Street, N.W.
Washington, D.C.

Gordon P. MacDougall

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE & TELEGRAPH COMPANY	)	Transmittal No. 12241
	)	
Revisions to Tariffs FCC Nos. 259, 260 and 263 filed January 3, 1975 to be Effective March 4, 1975	)	

To: The Commission

PETITION OF UNITED PRESS INTERNATIONAL, INC.
FOR REJECTION OR, IN THE ALTERNATIVE,
SUSPENSION OF TARIFF SCHEDULES

By Transmittal No. 12241, dated January 3, 1975, American Telephone & Telegraph Company (AT&T) filed revisions to its Tariffs FCC Nos. 259, 260 and 263 to become effective March 4, 1975. The filings provide for substantially increased rate levels for Long Distance Message Telecommunications Services (MTS) within the United States and between the United States and Canada and Mexico; Wide Area Telecommunications Service (WATS); and Private Line Service.

United Press International, Inc. (UPI), a New York corporation having its principal place of business at 220 East 42nd Street, New York, New York, by its attorneys, protests and hereby respectfully petitions the Commission

to reject the above-captioned tariff filings or, in the alternative if the Commission does not reject said filings, to suspend the effectiveness thereof for the full statutory period, issue an accounting order, and enter upon an expedited hearing as to the lawfulness of said tariff changes.

In support of its petition, UPI shows as follows:

Description of UPI, impact upon it and summary of its position.

1. UPI is one of the two principal news agencies of the country and is engaged in the business of gathering, preparing and distributing news and news reports, features, photographs, pictures and other news material to more than 6,500 newspapers, periodicals, radio and television networks and stations and other news media throughout the country and in foreign countries. Domestically, in order to distribute its news reports and other news material, UPI operates very extensive and elaborate communications networks which extend to over 2,000 cities and towns in the United States and Canada. These networks depend upon and make extensive use of the AT&T Private Line Services and channels. As of November 30, 1974 UPI's total monthly billing from AT&T for leased wires alone was $485,942, or at the rate of $5,831,304 per year. Unlike most businesses UPI's communications costs represent a substantial portion of its operating expenses. For example, in 1973 its

domestic leased wire expense represented approximately 12% of its domestic operating expense.

2. In its news gathering activities, UPI also makes extensive use of the Long Distance Message Telecommunications Services (MTS) of AT&T and to a limited extent Wide Area Telecommunications Service (WATS). Consequently, UPI is highly sensitive to any increase in AT&T's charges for communications services.

3. In the case of Private Line Services, the new tariff filings would increase all domestic rate elements for these services by 7.8% across the board. In terms of dollars this would amount to a monthly increase to UPI in its bill from AT&T for Private Line Services alone of $37,903, or an increase of $454,836 on an annual basis. On top of this UPI would sustain further increases in its bills for MTS and WATS Services, the extent of which UPI has not yet calculated. UPI maintains that increases of the magnitude of those for Private Line Services alone, coming in one stroke, are wholly unjust and unreasonable.

4. As the Commission is well aware, UPI is a party to the Hi-Lo tariff proceeding (Docket No. 19919) which is now awaiting decision by the Commission. That tariff filing of AT&T involves potential increases to UPI (on the basis of its current usage) of between $1,200,000 and $1,300,000 per year should the so-called TELPAK end-link exception be eliminated. Thus, UPI is faced with possible

foreseeable increases of between $1,650,000 and $1,750,000 on an annual basis for leased lines alone, plus such additional increases as would result from the increases in MTS and WATS rates. Such increases would deal a staggering blow to UPI and its subscribers and, in UPI's view, to the national interest in promoting the widest possible dissemination of news to the public.

5. It is the position of UPI that the new rates filed by AT&T are not only unjust and unreasonable, and hence unlawful for that reason, but that the entire tariff filing admittedly violates the rate of return findings and determinations of the Commission in Phase I of the pending Message Toll Telephone Rate Case (Docket No. 19129) and should therefore be summarily rejected.

The tariff filings should be rejected.

6. On November 22, 1972 the Commission released its Decision and Order in Phase I of the Message Toll Telephone Rate Case, Docket No. 19129, 38 FCC 2d 213. Phase I involved the determination of the permissible overall rate of return of the Bell System for its interstate operations. Bell's position was that a return of 9.5% should be allowed. However, after lengthy hearings the Commission found and specified 8.5-9.0% as the "range of reasonableness" for the foreseeable future. On the basis of this determination, Bell was allowed to file new and increased tariff rates on an interim basis consistent with such decision but under an accounting order and

subject to such findings as the Commission should make in Phase II of the proceeding and in the still pending Docket No. 18128. Thus, the Commission retained jurisdiction and control of the entire matter and the proceeding is still pending. Indeed, Phase II thereof is just getting underway.

7. In support of its new filings, Bell now in effect says that economic conditions have changed and that the Commission's 1972 rate of return determination is obsolete. Without any move whatever to reopen Phase I to receive such new data as it may have to offer in support of its claim for a higher allowable rate of return, Bell has unilaterally chosen to disregard the Commission's ruling and has filed new rates designed to produce a return of from 10-1/2 to 11%--substantially greater than that even advanced by Bell in Phase I. Certainly the Commission is not powerless to frustrate such a flagrant abuse of its processes.

8. If Bell now feels that it requires a rate of return higher than that allowed by the Phase I decision, it would seem that before taking the matter in its own hands by filing new rates the proper procedure should have been for it to petition the Commission to reopen and reconsider its rate of return determination within the framework of Docket No. 19129, a proceeding which is still open and should be the proper vehicle in which the issue of a reasonable rate of return should be determined. But Bell

apparently has little patience with the Commission's processes and appears determined to exact increased revenues from its users on the basis of its own determinations as to what rate of return and rate levels are reasonable. UPI submits that it would make a mockery of the Commission's processes and render meaningless the entire proceedings in Docket No. 19129, including Phase II which is now underway, if the newly filed rates were allowed to become effective without a prior determination by the Commission that the rate of return specified in Docket No. 19129 should be modified and new filings permitted. Clearly, unless and until the Phase I determination is modified, the unlawfulness of the current filings is clear and does not involve any disputed question of fact requiring a hearing. Consequently, we submit that the Commission should declare such filings unlawful on their face and reject them.

If the Commission should fail to reject the new tariff filings, it should suspend the same for the full statutory period and enter upon an expedited hearing as to their lawfulness.

9. Inasmuch as the newly filed rates are on their face unlawful, they should be rejected by the Commission as discussed above. If, however, they should not be rejected, then the public interest clearly requires that they be suspended for the maximum limit permitted by law and that the Commission enter upon an expedited

investigation and hearing concerning their lawfulness pursuant to the provisions of Section 204 of the Communications Act.

16. As heretofore mentioned, it is the position of UPI that the magnitude of the filed rate increases is such as to make them unjust and unreasonable and hence unlawful. Insofar as UPI and other press users are concerned, this is especially so when the new rates are measured in connection with the potential increases involved in the pending Hi-Lo tariff case. We further submit that the new filings are unfairly discriminatory in favor of MTS and against private line business users such as UPI who will receive a flat across-the-board 7.8% increase in their private line charges, while through various structural changes Bell has offered MTS users a number of ways of minimizing the impact upon them. Indeed, Bell claims that the prices of about 30% of all calls will be lowered. If this is true, then no such opportunities are available to the private line user. Moreover, the new MTS rates involve discriminations in impact as against users such as UPI and other press users whose interstate long distance calls made in the course of news gathering activities are predominantly short haul. Thus, wholly apart from the matter of lawfulness under the Phase I decision, there are serious questions as to whether the newly filed rates are otherwise lawful and are just and reasonable and not unjustly or unreasonably discriminatory.

At the very least, they should be suspended for the statutory period and be made the subject of investigation if they are not rejected.

WHEREFORE, UPI respectfully petitions the Commission:

(A) To find and determine on the basis of the material filed with AT&T's letter of transmittal that in view of the Commission's Decision and Order in Phase I of Docket No. 19129 the tariff filings are unlawful on their face and therefore must be rejected.

(B) To suspend the effective date thereof for the full statutory period if the Commission should not reject the tariff filings, enter upon an expedited investigation and hearing as to their lawfulness, in which proceeding UPI shall be entitled to full participation as a party, and enter an accounting order in the event a decision is not reached within the suspension period.

Respectfully submitted,

United Press International, Inc.

By _____

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January 28, 1975

A. 389

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D. C. 20554

Revisions to the American Telephone & Telegraph Company Tariffs Numbers 259, 261 and 263 Filed Under Transmittal Number 12241 on January 3, 1975.	Docket No.

PETITION OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA FOR SUSPENSION AND INVESTIGATION

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January 29, 1975

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C., 20554

A. 390

Revisions to the American Telephone & Telegraph Company Tariffs Numbers 259, 260 and 263 Filed Under Transmittal Number 12241 on January 3, 1975.	Docket No.

PETITION OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA FOR SUSPENSION AND INVESTIGATION.

1. Pursuant to Rule 1.773 (47 CFR 1.773) of the Rules of Practice and Procedure (Rules) of the Federal Communications Commission (FCC), the People of the State of California and the Public Utilities Commission of the State of California (California) respectfully petition for a suspension and an investigation of the tariffs of the American Telephone and Telegraph Company (AT&T) filed on January 3, 1975, for an increase of $717,000,000 in interstate rates which become effective on March 4, 1975, if not suspended.[1/] In support of such petition, California states:

I.

2. The Public Utilities Commission of the State of California is an administrative agency created and existing under the constitution and laws of the State of California. Among its duties, it exercises general regulatory supervision of telephone companies within the state of California, including supervision of service and the rates and charges of said companies.

3. It is obligated to protect the people of the state who are customers of said companies.[2/] The General Counsel of the Public Utilities Commission of the State of California is authorized, under Section 307 of the California Public Utilities

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1/ On January 24, 1975, a telegraphic request for suspension and investigation was made in order to timely lodge California's Petition for Suspension.

2/ California Constitution, Article XII; California Public Utilities Code, Sections 216 and 454.

Code, to intervene on behalf of the People of the State of California and the Public Utilities Commission of the State of California in a proceeding of this nature.

II.

4. The AT&T application to increase interstate message toll, wide-area telephone and private-line charges by $717,000,000 annually is to become effective on March 4, 1975, unless the associated tariffs filed on January 3, 1975 are suspended. The proposed rates for message toll telephone service would change the toll rate patterns presently in effect and would result in an unlawful, unreasonable, and substantial increase in revenue requirements necessitating an increase in intrastate rates of California telephone ratepayers in violation of Section 201(b) of the Communications Act of 1934 (47 USCA 201(b)). Section 201(b) declares in part that charges, practices, classifications and regulations in connection with communication services that are unjust or unreasonable are unlawful.

5. The proposed rate increase would cause a transfer of interstate revenue requirements to the intrastate category of approximately $30,000,000 annually for the California Bell System company, The Pacific Telephone and Telegraph Company (PT&T). Corresponding effects would occur relative to the independent telephone companies in California.

6. The adverse separations effect stems from the portion of the separations formula contained in paragraph 23.444(b) of the Separations Manual, incorporated by reference at Part 67 of the FCC Rules (47 CFR 67). This portion of the formula known as the Composite Station Rate (CSR) ratio is determined by relating the toll rate at the average length of haul for each state with the toll rate at the average nationwide length haul.

7. For the year 1973, there were five states with CSR ratios below unity (1.00) and one state at unity. All other states have CSR ratios above unity. It appears that most, if not all, states with CSR ratios above unity will suffer a reduction in this ratio with a consequent shift in revenue requirement

from interstate to intrastate operations. The effect in California is to burden the intrastate telephone user with an additional $30,000,00 in revenue requirements. It is submitted in this era of double-digit inflation with frequently recurring requests for intrastate telephone rate increases, the shifts of revenue requirements that would result from the proposed AT&T increase would cause an intolerable and unreasonable increase in intrastate rates for California ratepayers, and similarly would adversely affect the intrastate rates of most other states with CSR ratios above unity.

8. It is submitted that the consequence of the proposed changes in toll rate patterns is unreasonable and unlawful under Section 201(b) of the Communications Act of 1934 (47 USCA 201(b)).

III.

9. In addition to the foregoing, California asserts that if the proposed tariffs go into effect, the resulting rate increase would unlawfully discriminate against the California intrastate telephone ratepayer, in violation of Section 202(a) of the Communications Act of 1934 (47 USCA 202(a)). Section 202(a) declares that unjust or unreasonable discrimination or preferences in charges, practices, classifications, regulations, facilities or services in connection with communication services are unlawful.

10. It is submitted that most, if not all, states with CSR ratios above unity will suffer a shift in their revenue requirements from interstate to intrastate operations. The five states with CSR ratios below unity may benefit with a shift in revenue requirements from intrastate to interstate operations. California asserts that the effect of the proposed shift in revenue requirements unlawfully discriminates against states with CSR ratios above unity (the longer-haul ratepayers) relative to the preferences that may be received by the five states with CSR ratios below unity, the shorter-haul ratepayers.

11. California submits that the result of the proposed shift in revenue requirements is unlawfully discriminatory in violation of Section 202(a) of the Communications Act of 1934 (47 USCA 202(a)).

IV.

12. The National Association of Regulatory Utility Commissioners' (NARUC) petition for separation changes filed in December, 1973, has been directed by the FCC to be considered in Docket No. 20003. California supports the NARUC petition. If the proposed AT&T rate increase goes into effect on March 4, 1975, the consequence would be a separations shift directly opposite to that requested by NARUC in its petition

13. Therefore, if the AT&T-filed tariff should become effective on March 4, 1975, action should be taken by the FCC to delay any change in separations as a result of the AT&T filing pending the outcome of a consideration of the directly opposed separations positions of the AT&T and NARUC.

V.

14. Additionally, California requests that the FCC order AT&T to submit the revenue requirements effects on each state as a result of its rate increase filing.

VI.

15. It is submitted that the attempt by the AT&T to change toll rate patterns in its application for a rate increase emphasizes the need for an expeditious consideration of modifications to separations manual procedures so as to appropriately modify the calculation of separations factors based on the rate patterns now included in paragraph 23.444(b) of the Rules, Part 67.

16. If the petition for suspension and investigation herein is granted, California respectfully requests that said modification to separations manual procedures be designated as an issue in the suspension and investigation. If the

petition is not granted, California requests in the alternative that the FCC order early hearings to consider said modification to separations manual procedures.

VII.

17. California respectfully petitions the FCC to issue an order of suspension and investigation of the revisions to the AT&T tariffs numbers 259, 260 and 263 filed under transmittal number 12241 on January 3, 1975, to become effective March 4, 1975 and to designate for hearing the unlawful effects of the proposed shift of the toll rate patterns in effect.

18. California further respectfully requests the FCC, if this petition is granted, to designate as an issue modifications to separations manual procedures, so as to appropriately modify the calculation of separations factors based on the rate patterns now included in paragraph 23.444(b) of the Rules, Part 67.

19. California further petitions the FCC to order the AT&T to submit the revenue requirements effects on each state as a consequence of the proposed rate increase.

20. The requested hearing should not be confined to the issues requested to be designated herein, since other issues may arise which will require resolution by the FCC.

VIII.

21. If this petition for suspension is not granted, California respectfully requests in the alternative that an order issue specifying that no shift in revenue requirements will be made as a result of the rate changes until possible separations manual changes have been considered.

Respectfully submitted,

/s/ RICHARD D. GRAVELLE

Richard D. Gravelle

/s/ J. CALVIN SIMPSON

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Attorneys for the People of the State of California and the Public Utilities Commission of the State of California

January 29, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT	)	Transmittal No. 12241
	)	
Revisions of AT&T Tariff F.C.C. No. 260, Private Line Services	)	

To: The Commission

ERRATUM TO PETITION TO REJECT TARIFF FILING

Page 2 of the Petition To Reject Tariff Filing submitted in the above matter by the Ad Hoc Telecommunications Committee on January 28, 1975 contained an estimate that the annual bills for private line services of the five member companies would increase by an aggregate total of approximately $3 million. This figure, however, included the estimated increases resulting from the proposed higher rates not only for the private line services but also MTS and WATS. The estimated increase in the annual bills of the five companies attributable to the proposed higher private line rates will be approximately $1,890,000.00.

Respectfully submitted,

Ad Hoc Telecommunications Committee

By Jeremiah Courtney
Jeremiah Courtney

Arthur Blooston
Arthur Blooston
Its Attorneys
2120 L Street, N. W.
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Dated: January 31, 1975

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
American Telephone and Telegraph	)	
Co. Tariff Filing Seeking Increased	)	Transmittal No. 12241
Rates for Interstate Services Set Forth	)	
in FCC Tariff Nos. 259, 260 and 263	)	

To: The Commission

ERRATUM

On January 28, 1975, Mutual Broadcasting System, Inc. filed a Petition for Suspension and Investigation of the above-captioned tariff filing of American Telephone and Telegraph Company.

The last sentence in Paragraph 19 of Mutual's Petition is in error. That sentence should read as follows:

> Mutual test results, however, which will be made available to the Commission or other interested parties on request, showed gain frequency response fluctuating on the average between +10db and -29db and signal to noise ratio averaging 30db on program transmission lines serving its affiliate in Seattle, Washington.

Respectfully submitted

MUTUAL BROADCASTING SYSTEM, INC

By Richard A. Helmick

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Its Attorneys

February 4, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT	)	
	)	
Revisions of Tariff F.C.C. Nos. 263, 259, and 260 Rates, Respectively, for Long Distance Message Telecommunications Service, Wide Area Telecommunications Service and Private Line Service	)	Transmittal No. 12241

REPLY

American Telephone and Telegraph Company (AT&T), pursuant to Section 1.773(c) of the Commission's Rules, hereby replies as follows to the pleadings* requesting suspension and investigation, and in some cases also requesting cancellation,

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* We are in receipt of petitions seeking suspension filed by the Council on Wage and Price Stability ("Council"); City of Chicago ("Chicago"); Executive Agencies of the United States ("Executive Agencies"); Trial Staff of the Common Carrier Bureau in Docket No. 19129 ("Trial Staff"); Mutual Broadcasting System, Inc. ("Mutual"); Intermountain Network, Inc. ("IMN"); Data Transmission Co. ("Datran"); American Broadcasting Companies, Inc., CBS, Inc., National Broadcasting Company, Inc. ("Networks"); National Data Corporation ("National Data"); Commonwealth of Pennsylvania ("Pennsylvania"); and State of California and Public Utilities Commission of California ("California"). Ad Hoc Telecommunications Committee ("Ad Hoc Committee") requests rejection of the filing. Petitions seeking cancellation, rejection or withdrawal or, as alternative relief, suspension and investigation have been filed by Commodity News Services, Inc. ("CNS"); American Newspaper Publishers Association ("ANPA"); Aeronautical Radio, Inc. ("ARINC"); Aerospace Industries Association of America, Inc. ("AIA"); Associated Press ("AP"); Air Transportation of America ("ATA"); and United Press International, Inc. ("UPI").

rejection or withdrawal*, of the above-captioned tariff revisions:

1. On January 3, 1975, AT&T filed tariff revisions providing for increased charges for the Bell System's interstate services, to be effective March 4, 1975. The data in support of the filing showed that these rate changes are urgently required in view of the impact that current economic conditions have had on Bell's costs of operations (including labor expenses) and cost of capital. As detailed in the supporting data, there have been dramatic changes in financial and economic circumstances since the Commission's previous rate-of-return decision in 1972. The rate of inflation today far exceeds the 3 percent inflation rate of 1972; the current costs of long-term debt are substantially greater than the 7 1/4 to 7 1/2 percent level upon which the Commission premised its 1972 decision; Bell's embedded cost of debt has risen significantly above the 6 percent level of 1972; and the cost of attracting equity capital has risen sharply in the

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* The petitions of CNS, ANPA, ARINC, AIA, AP, ATA, and UPI improperly combine requests for suspension and rejection in contravention of a ruling of the Chief, Common Carrier Bureau (see letter dated December 22, 1972 from the Chief, Common Carrier Bureau to Counsel for Independent Data Communications Manufacturers Association re AT&T Transmittal No. 11618). Because these alternative requests for relief were presented in the same document by each of these petitioners, we are including in this Reply our opposition to the rejection petitions as well as our response to the petitions to suspend.

past two years.* It is significant that none of the petitions filed with respect to AT&T's tariff filing dispute the fact that economic conditions of today are materially different from those existing at the time of the Commission's 1972 decision.

2. In Part I of this Reply we will respond to the petition for suspension submitted by the Council on Wage and Price Stability. Since in our discussion therein we review the impact of present conditions on Bell's labor costs and on its cost of capital, the discussion in that part applies as well to other petitions seeking suspension. In Part II we will further respond to the suspension petition submitted by the Trial Staff in Docket 19129. In Part III we will respond to the petitions of the private line users and therein demonstrate that the petitions filed by certain users seeking rejection, cancellation or withdrawal of the tariff filing are totally lacking in merit. The asserted grounds for rejection are flatly contrary to the statutory scheme of the Communications Act and have been expressly considered and denied in numerous judicial and Commission decisions set out and discussed below. In Part IV we will comment briefly on various points raised in certain other petitions to suspend.

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* Many of these changed financial circumstances are reviewed in the letter from Mr. Billingsley of AT&T to the Chairman of the Commission, dated January 3, 1975. For a more complete discussion of the impact of these current conditions on Bell's cost of capital, see Bell Statements 3, 4, and 5 filed in support of the filing.

I. Petition of the Council on Wage and Price Stability

3. The Council's petition,* seeking suspension and investigation, acknowledges that AT&T's January 3, 1975 tariff filing demonstrates the need for increased interstate revenues, although the Council argues that the allowed increases should be "substantially less" than requested by AT&T (p. 3). In the Council's view, justification for current increases in interstate revenues should be related to increases in Bell System operating costs as well as increases in the cost of Bell System debt.

4. The Council, however, substantially understates the magnitude of these increased cost elements. The recent labor settlement, reached in August and September 1974, has added a significant sum to the wage costs of the Bell System. The additional wage costs resulting from these agreements, plus associated benefit costs for all employees, have added an additional $375 million to Bell's interstate operating expenses for 1975 (Bell Statement 2, p. 13). Moreover, these added labor costs for the year 1975 do not reflect the full year's impact of increased wage costs which will rise again in August 1975 pursuant to these agreements. Recognition of the full year's impact of the August 1975 wage increases means that the annual

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* While there is serious question concerning the legal authority of the Council to participate in this matter (See P.L. 93-387, 88 Stat. 750, sec. 3 (a)), we are nevertheless commenting on the points raised in the Council's petition.

labor cost in 1975 for Bell's interstate operations would be about $525 million greater than it would be under wage levels as they existed in mid-1974 prior to these agreements.

5. The Council also agrees in its petition (pp. 3, 8) that increased interstate revenues are now justified to reflect the higher cost of Bell System embedded debt.* Bell's embedded debt costs have risen from the 6 percent used by the Commission in its Phase I Decision in 1972 to about 6.9 percent at the present time. The higher costs of Bell's embedded debt would justify a further increase in interstate revenues of about $158 million.**

6. Thus, allowing only for the increased cost elements of Bell's labor costs and embedded cost of debt--which the Council concedes as appropriate--would justify an interstate revenue increase in the amount of $533 million to $683 million.

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* The Council acknowledges in this connection that the rate of return determined by the Commission for 1972 conditions of 8 1/2 to 9 percent was based upon a capital structure of 55 percent equity and 45 percent debt with an embedded cost of debt of 6.1 percent (p. 8) (actually the Commission found the embedded cost of debt to be 6 percent, 38 F.C.C.2d at 231). Moreover, the Council recognizes that when the Commission set this rate of return in 1972 it did so in light of a current and anticipated cost of long-term debt of 7-1/4 to 7-1/2 percent (p. 8). In dramatic contrast Bell System long-term debt costs increased steadily, and in the last 6 months of 1974 Bell's interest costs on its new long-term debt averaged over 9-1/2 percent. The Council concedes that the embedded cost of debt amounts to 6.8 percent (p. 8). In fact, Bell's embedded cost of debt has increased to 6.9 percent at the end of January 1975.

** This calculation is based on a 45 percent debt ratio applied to an increase in the embedded cost of debt in the amount of 0.9 percentage point (i.e., from 6.0 to 6.9 percent). This increases Bell's overall return requirement by 0.405 percentage point. At $38.9 million revenues (before taxes) necessary to increase return by 0.1 percentage point (based on 1975 average net investment, Bell Statement 2, Att. A), the necessary increase to reflect the rise in embedded cost of debt is $158 million. As shown in the supporting data for the filing, it is likely that Bell's embedded cost of debt will be at 7.0 percent at the end of 1975 (Bell Statement 5, p. 10 and Att. E).

7. The Council attempts to minimize the amount of the needed increase by calculating the amount of increase from 8.2 percent return to the level of 8-1/2 percent. Aside from the fact that the 8-1/2 percent return level was based on 1972 economic and financial conditions (which are no longer applicable), the Council ignores that the Commission in 1972 set a range of return from 8-1/2 to 9 percent. The range was to provide an incentive for the Bell System to improve its earnings through efficiency and productivity gains. 38 F.C.C.2d at 245. Were it not for the increased labor costs associated with the 1974 settlement, Bell's interstate earnings would have been at that 9 percent level. The Council's use of the lower part of that range thus penalizes Bell for its efficiency and productivity improvements.

8. Moreover, it is abundantly clear at the present time that the 8.17 percent view for 1975 interstate operating results (which was developed in the Fall of 1974) is much too optimistic in light of more recent economic forecasts. Interstate operating results for December 1974 turned out to be a full percentage point lower than had initially been forecasted, and current estimates for 1975 economic conditions indicate a significantly greater downturn in business than had been predicted several months ago. Based upon forecasts for 1975 economic conditions (developed at year-end 1974), Bell's view for 1975 interstate operating results, without rate relief, has been revised downward

to 7.94 percent. The Bell System is now in the process of formulating a new 1975 view based upon more recent economic forecasts, and the preliminary indications are that the 1975 view will be even lower than 7.94 percent. But even on the basis of the view showing 7.94 percent, annual revenues would have to be increased in the amount of $412 million before Bell's interstate return would exceed the range allowed by the Commission in 1972.* And if allowance is made for the increase in the embedded cost of debt since 1972, revenues would have to be increased by $570 million.

9. But merely recognizing increased costs for labor and embedded debt is not enough to reflect the substantial cost increases prevailing under current financial and economic conditions. A basic error in the Council's petition is its failure to recognize the significant increase in the cost of Bell's equity capital. We have no disagreement with the substance of the Council's standard as to what constitutes a proper showing to support an increase in the rate level of Bell's interstate earnings. The pertinent standard the Council has enunciated is that:

> "any permitted increase in the rate level not exceed the level required both to meet the actual costs incurred by the company and to permit the company a just and reasonable rate of return on its investments in interstate operations" (Petition, pp. 4-5).

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* An increase of 1.06 percentage points (7.94 to 9.0 percent) at $18.9 million per 0.1 percentage point.

However, the Council's petition, in recognizing only increased operating and debt costs as justification for increased rates, is inconsistent with its own standard. This is so because the Council would deny a fair rate of return on the entire equity portion of the investment in interstate operations, which it recognizes amounts to more than half of the total interstate investment.

10. It is AT&T's position, fully supported in its January 3, 1975 filing with the Commission, that there has been a substantial increase in the current cost of equity capital along with the dramatic increase in the cost of debt which has occurred since the Commission's 1972 Phase I Decision in Docket 19129. In its 1972 Decision the Commission recognized the relationship between the current cost of long-term debt and the current cost of equity capital,* and it premised its equity return calculation on a 7-1/4 to 7-1/2 percent cost of long-term debt "for the present, and in the immediately foreseeable future." (See 38 F.C.C.2d at 230-31.) Since then Bell's debt costs have risen well above those levels. (See, e.g., Bell Statement 5, Atts. C and D). In the past six months Bell's long-term debt

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* For example, the Commission stated:

> "It is of course true that equity costs generally increase as debt costs increase since debt is senior in claim on assets and income and the equity holder bears most of the risk of the business and requires a higher return to compensate for such risk" (38 F.C.C. 2d at 231).

costs have ranged between 8.7 percent to over 10 percent--substantially above the levels relied upon by the Commission in 1972.* Clearly, the current cost of Bell's equity capital has followed the sharp increase in Bell's debt costs.

11. The Council contends that the "recent easing in the capital markets" and anticipated monetary policies will likely cause Bell's current cost of long-term debt in the immediate future to be below that experienced in the recent past (p. 8). An examination of the materials underlying the tariff filing, however, shows that a continuation of the high interest rates prevalent in the latter part of 1974 was not the basis for Bell's rate of return calculation.** Thus, Bell's equity return computation was based on an average cost of long-term debt of about 8-1/2 percent (Bell Statement 5, pp. 10, 18).***

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* The reference in the Council's petition (p. 8) to a recent Southwestern Bell issue selling at less than 8 percent was one involving intermediate-- not long-term-- debt.

** In his Statement, Dr. O'Leary estimates that the prime rate could fall to 7 to 8 percent by mid-summer 1975, and long-term debt costs could average about 8-1/2 percent in 1975 (Bell Statement 3, pp. 21, 23).

*** The January 28, 1975 issue of $300 million of AT&T long-term debt cost about 8.7 percent, which is above that level.

12. The Council's petition recognizes that in view of Bell's current debt ratio "the Company's desire to raise additional equity is understandable" (p. 9). But it is not enough merely to acknowledge the current need of the Bell System to raise additional equity. It is beyond serious argument that investors will be attracted to equity only if they can obtain market returns substantially above rates available on more secure debt issues. (See Bell Statement No. 5, pp. 17-19). In a period when longer-term inflationary expectations are 6 percent or higher and interest rates on long-term bonds are likely to average 8-1/2 percent or higher, applying even the most minimal historic spreads indicates that investors require equity market returns today of 12-3/4 to 13-1/2 percent (thus requiring 13-1/2 to 14-1/2 percent on book investment) (Id. at 17-25). The Council's filing ignores these facts entirely and their adverse implications for any new issue of AT&T common stock while its return on existing equity is at its current depressed level.

13. The Council conjectures that "there may be considerable leeway for debt financing without serious downgrading of bond ratings" (Petition, p. 9). In even suggesting the possibility of such a course of action, the Council ignores the inquiry into debt ratio in Phase I of Docket 19129 where the Commission rejected attempts to force the Bell System to a debt ratio higher than 45 percent -- a figure which has already been exceeded because of Bell's inability to issue significant amounts of new common

equity on terms fair to existing investors (38 F.C.C.2d at 234).* Events since the Commission's 1972 decision have emphasized with new and compelling force the need for a company and its regulators to resist any course that could seriously jeopardize the quality rating of a utility's debt securities. In view of recent events, suggestions that a utility should be deprived of a fair equity return because it may have "leeway" to sell more debt should be emphatically rejected as not merely unfair to existing investors but also perilous to the public which depends upon the utility's services.

14. The position which the Council appears to favor -- although it offers no analysis or supporting documentation for it -- is for the Bell System to issue "common, preferred, and bonds in carefully timed and proportioned amounts without reference to the ratio between market and book values" (Petition, pp. 9-10). The Council's position, however, is economically unsound and directly contrary to principles enunciated by this Commission. In its 1972 Phase I Decision the Commission recognized the importance of achieving a market price above book value in order to attract capital on terms fair to existing shareholders, and the Commission stated its expectation that the equity return it

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* Moreover, the Council ignores the urgent need to improve another important factor affecting the quality rating of Bell's debt issues, i.e., interest coverage. The overall return allowance Bell is seeking will restore a post-tax interest coverage of 3 times, which is the minimum coverage needed to preserve the quality rating of Bell's debt (Bell Statement 5, p. 26).

was then allowing would permit Bell to issue stock on such terms. (38 F.C.C.2d at 234-35.) The improved market/book relationship desired and anticipated by the Commission has not materialized. Indeed the market/book relationship is even worse today than when the Commission adopted its Decision in 1972 (see Bell Statement 5, Att. A).

15. The only solution to the Bell System's need to issue additional common stock is to be allowed to increase its equity earnings to a level sufficient to attract new equity investment on sound terms. There is nothing in the Council's petition which seriously questions the position fully set out in AT&T's January 3, 1975 filing with the Commission that Bell's return on equity must be substantially increased to reflect current financial conditions.

16. The Council is in general agreement with the principles underlying the proposed changes in rate structure as distinguished from rate level. The Council expresses the view that the "modification of the rate structure along the lines proposed by AT&T ... may well be desirable" (Petition, p. 3). It also notes that these structural revisions lead to substantial cost savings, which is a "further desirable result" (p. 12). We do not disagree with the Council's request that the Commission inquire fully into the new rate structure. We would expect the Commission to do that, as it has in the past. Indeed, in Phase II of Docket 19129 there is currently underway an investigation of the MTS rate structure, as the Council requests.

17. The Council does not support its stated concern that the new MTS rate structure may cause hardship to segments of the business community (such as small and intermediate-sized businesses) or that it "might result in substantial dislocations in various areas of the economy" (Petition, p. 12). We are confident that no such results will ensue from the new rate structure. In this respect the Council focuses on the increases for calls requiring operator assistance, which it does not question are much more labor-intensive and have been subject to substantial cost increases. Such operator assisted calls, however, represent the smaller proportion of MTS traffic. The Council neglects to recognize the significant benefits to business users arising from the establishment of a one-minute initial period for all customer dialed station calls, which represent the bulk of MTS use. Business users will particularly benefit from this new one-minute initial period schedule, which results in lower charges than at present for most customer dialed calls of one or two minutes. About 26 percent of interstate station messages dialed by business customers have a duration of one minute or less, and another 18 percent of such business messages are one to two minutes. Thus, with 44 percent of such business messages having a duration of two minutes or less, the new schedule provides lower rates for a significant portion of business users with no change in calling habits, and provides to all the opportunity for lower charges through a change in calling patterns to adapt to the new rate structure.

18. The Council urges that the filed modifications in the MTS rate structure should be subject to a "program for phasing the changes" (p. 12). The Council fails to recognize that many of the structural changes designed to reflect the more costly elements of the MTS rate schedule have already been subject to "phasing" over the past 12 years. Thus, in 1963 (when other rates were being reduced) the rates for many person-to-person calls were increased to recognize their greater costs, and this pattern was followed in rate changes in ensuing years (such as in 1971 and 1973). Similarly, calls of shorter mileages have been increased in phases over the years in order to minimize the customer impact while permitting the charges for such calls to come closer to covering the relevant costs. And in 1970, (when other rates were reduced) and in 1971 and 1973, charges for operator assisted station calls (credit calls and collect calls, for example) were increased to recognize their cost differentials. There has, in short, been a phasing of these structural changes over the years, and in this regard the 1975 filing continues that program.

19. The filed MTS structural revisions are designed to improve the efficiency and productivity of the network by placing major increases on peak traffic and on the more costly rate elements (e.g., short haul calls and operator assisted calls). At the same time the schedule is designed to give customers low cost options such as through the one-minute initial period and providing rate incentives for off-peak traffic at nights and weekends.

These objectives promote the national policies of fighting inflation and encouraging productivity gains. To delay the implementation of these revisions by "phasing," as the Council suggests, would contravene these objectives.

20. Lastly, in connection with the Council's petition, we must note that AT&T's present rate increase should be considered against the background of the Bell System's remarkable price performance over the years in the face of the continuing and increasing inflation elsewhere in the economy. As we pointed out when this filing was submitted to the Commission, this is only the second time since 1953 that AT&T has found it necessary to seek a general increase in interstate rates. Even with this 1975 increase, interstate rates will be at the same level as in 1953, while the Consumer Price Index is now more than 93 percent over its 1953 level. Since 1965 Bell's wages have increased 78 percent, the cost of its telephone plant and equipment is up 60 percent, and the CPI is up 63 percent, while with this rate increase Bell's interstate rates will be only 7 percent higher than in 1965. Since the last increase in interstate rates two years ago, the Consumer Price Index has risen well over 20 percent. These facts demonstrate that the Bell Sytem has had an exemplary record of resisting the inflationary trends in the economy over the years.

II. Petition of the Trial Staff

21. In its petition to suspend (pp. 2-3) the Trial Staff in Docket 19129 introduces some one-sided contentions contained in its forthcoming case in Phase II of that proceeding with respect to Bell's operating expenses and plant investment. These are merely allegations by the Trial Staff, the bulk of which have not as yet been introduced into evidence, much less subjected to cross-examination and rebuttal.* These matters will be resolved through hearing and decision in Phase II. We believe that the record in that proceeding will demonstrate that the Trial Staff's contentions are entirely unfounded and that Bell's operating expenses and investment are reasonable and prudent.

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* Mr. Dreher is the only witness cited by the Trial Staff in this regard whose testimony has even been introduced into evidence in Phase II. This testimony is still subject to rebuttal. It should be noted that the Trial Staff itself in that proceeding has disclaimed that it was adopting as its own the testimony of Mr. Dreher (see Tr. 16155 in Phase II, Docket 19129). Furthermore, Mr. Dreher conceded on cross-examination that he was not proposing any retroactive adjustments to past periods such as 1973 (see, e.g., Tr. 16195, 16287). And even the figure cited in the Trial Staff's petition (p. 3) as to a reduction in pension costs is not confined to Bell's interstate operation but applies to all of Bell's operations (of which only about 30 percent is interstate).

The proferred submissions by witnesses Mina and Lipske have not been introduced into evidence. It should also be noted that Mr. Lipske's submission does not propose a specific disallowance but only recommends further investigation of the depreciation reserve. And the figure cited in the Trial Staff's petition as to Mr. Lipske's proposal is not confined to Bell's interstate operations but relates to all of Bell's operations.

22. The Trial Staff's petition (p. 3) points to certain recent announcements concerning reductions in Bell's 1975 construction program and in its work force. While it is true that in view of the current business downturn Bell has reduced the size of its 1975 construction program to somewhat below the $10 1/2 billion level that had been initially anticipated, this circumstance does not obviate the need to attract substantial amounts of new capital in the years ahead (about $3.3 billion in 1975). In order to attract such capital in the highly competitive money markets, Bell must be allowed to earn at levels commensurate with today's economic realities. Moreover, whatever reductions in Bell's work force that may be required by current business conditions will be reflected in the updated interstate earnings view for 1975, which reflect a lower rate of return than had been first determined (see para. 8, supra).

23. Relying on results obtained under one method of Bell's fully distributed cost (FDC) material submitted with the filing in compliance with the Commission's rules,* the Trial

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* The Trial Staff cites only Method 1 of these FDC results and ignores the data under the other FDC methods. As we showed in the Docket 18128 proceeding, the Method 1 results present the most distorted representation of historical costs applicable to a service category (see, e.g., Bell's Proposed Findings in Docket 18128, paras. 234-41).

Staff alleges that MTS is "subsidizing" other interstate services. The Trial Staff suggests a statutory suspension and investigation of the MTS rates but an immediate effective date for increasing the other rates (p. 5). (In contrast, see the submissions of the private line users who object to increases in private line rates, infra, paras. 25-61). The filed rate increases for all services, designed to increase the revenue levels for all the principal service categories on a proportionate basis, should all be put into effect on the filed effective date in order to provide urgently needed additional revenues. Moreover, to adopt the FDC standard advocated by the Trial Staff would be a manifest prejudgment of the complex issues in Docket 18128. Bell's position as to the deficiencies of FDC as a costing and ratemaking standard have been fully set forth in the record in that proceeding (see, e.g., Bell's Proposed Findings in Docket 18128, paras. 64-66, 89-94, 248-269). These are issues yet to be decided by the Commission in the context of the massive record in Docket 18128. On a number of occasions the Commission has repeatedly emphasized that the appropriateness of FDC as a cost standard for ratemaking has not yet been resolved. See, e.g., 18 F.C.C.2d 761, 763; 23 F.C.C. 2d

503, 508-09; 25 F.C.C.2nd 957, 967; 29 F.C.C.2d 870, 916.*

24. The Trial Staff also attaches excerpts from the testimony of Dr. Melody in Phase II of Docket 19129.** Again, it should be pointed out that these are matters yet to be resolved in that proceeding. Rebuttal to Dr. Melody's contentions about the MTS rate structure and the supporting cost data has yet to be submitted. We believe that any investigation of the newly filed MTS rate revisions, either in Docket 19129 or in any other proceeding the Commission may order, will demonstrate that these MTS changes are sound and fully supported.

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* The Commission stated, for example, that it has not reached "any conclusion, at this time, as to the weight, if any, that should be accorded to either or both of these factors [FDC and long-run incremental costs] in fixing rates for a specific service" (18 F.C.C.2d at 763). The Commission denied that it has "prejudged the issue as to what type of costs will be used for determining the lawfulness of existing rate levels and rate structures," noting that "[w]e have not determined that such [historical] costs are the proper indication of [interservice] burden" and that "[w]e will consider any and all demonstrations of cost that can be used to determine whether such burden does or does not exist" (23 F.C.C.2d at 508-09). These pronouncements, as well as several others, have made it abundantly clear that the Commission is not wedded to the FDC criterion and that it has yet to resolve whether, or to what degree, FDC estimates enter into the ratemaking process.

** It should also be noted that in that proceeding the Trial Staff expressly disclaimed it was fully adopting Dr. Melody's views (Tr. 16370).

III. Petitions of the Private Line Users

25. Most of the petitions herein were submitted by various user groups, whose interest is primarily in the level of private line rates. These petitioners represent certain newspaper and press interests (CNS, ANPA, AP, and UPI), radio broadcasters (Networks, Mutual, and IMN), and other large communications users (ATA, ARINC, AIA, Executive Agencies, and Ad Hoc Committee).* As noted above (para. 23), the Trial Staff urges that the private line rate increases should immediately be put into effect. The private line users, however, seek suspension of the rate changes for the maximum period, contending that such increases would have a substantial impact on the specific services they use (e.g., Networks, p. 4; Mutual, p. 15; IMN, p. 3; ATA, p. 6). The interests of these users can be fully protected by an accounting order without the maximum suspension period. On the other hand, a suspension would irrevocably deny AT&T urgently needed rate relief during the suspension period. As fully documented in the material submitted with the tariff filing (e.g., Bell Statements 1-5) and reviewed herein (e.g., paras. 3-15), Bell's interstate earnings are plainly inadequate under current conditions and immediate rate relief is required to permit Bell to achieve that level of earnings necessary to attract capital and preserve its financial integrity.

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* While certain of these petitioners (e.g., ANPA) are also users of MTS and WATS, the private line services constitute the bulk of their communications use.

1. The Relief Sought In The Petitions To Reject Would Contravene The Express Statutory Scheme Of The Communications Act.

26. Certain petitioners (CNS, ANPA, ARINC, AIA, AP, ATA, UPI and Ad Hoc Committee) further ask the Commission to reject, cancel, or postpone all or part of AT&T's tariff filing without even affording Bell the opportunity for hearing and without making findings as to the lawfulness of the rates on the basis of an evidentiary record.* These petitioners would thereby have the Commission depart from the explicit statutory scheme of regulation in the Communications Act that allows a carrier to make rate changes until and unless the Commission holds hearings and finds the rates unlawful. 47 U.S.C. §§203-04.

27. This fundamental principle of carrier-initiated rates was most recently affirmed in American Telephone & Telegraph Co. v. FCC, 487 F.2d 864, 871 (2d Cir. 1973), where the Court of Appeals for the Second Circuit stated at the outset of its opinion that: "The Communications Act of 1934 . . . does not require carriers to obtain the approval of the Commission before making changes in their rates." The Court then held squarely that the Commission has no authority to prevent carrier-initiated rates from taking effect unless the Commission has previously prescribed rates under Section 205 of the Act, or unless, within the time required for notice under Section 203 and suspen-

* ATA seeks cancellation, withdrawal, or postponement only of the TELPAK portion of the interstate rate increase. (See ATA, pp. 3, 26-27).

sion under Section 204, the Commission has found the newly-filed rates unlawful. 487 F.2d at 871-72.* The court reasoned:

> "[I]t is abundantly clear to us that the statutory scheme of the Communications Act reflects the realization of Congress that when a carrier is prevented from placing in effect new rate increases it may suffer irreparable loss which in turn may impede the provision of adequate service during a period of rising costs." (Id. at 873-74).

28. In arriving at this conclusion, the Court of Appeals reviewed decisions of the Supreme Court holding that the provisions of regulatory statutes relating to the suspension, effective date, investigation and possible refund of carrier-initiated rates represent Congress' careful balance of competing interests and must not be upset by either courts or agencies. In Arrow Transportation Co. v. Southern Railway Co., 372 U.S. 658, 668 (1963), for example, the Court interpreted provisions of the Interstate Commerce Act that are virtually identical to Section 204 of the Communications Act, and concluded that, by writing a uniform regulatory procedure into the Act, "Congress meant to foreclose a judicial power to interfere with the timing of rate changes . . ." (emphasis by the Court). In United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 697 (1973), the Court

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* The Commission's only express authority to reject tariffs without a hearing is found in Section 203(d) of the Act which allows the Commission to reject a tariff schedule that fails to "provide and give lawful notice of its effective date" as required under Section 203(b). (47 U.S.C. §203(b),(d)). But as the Court held in AT&T v. FCC, supra., "the Commission may not rely upon this section to circumvent the requirements of Sections 204 and 205" by rejecting tariffs without hearings and findings (487 F.2d at 879); Section 203 only authorizes the Commission to "modify requirements as to the form of, and information contained in tariffs and the thirty days' notice provision." (Id.)

found in these same provisions a "careful accommodation of the various interests involved:"

> "The suspension period was limited as to time to prevent excessive harm to the carriers, for the revenues lost during that period could not be recouped from the shippers. On the other hand, Congress was aware that if the Commission did not act within the suspension period, then the new rates would automatically go into effect and the [consumer] would have to pay increased rates that might eventually be found unlawful. To mitigate this loss, Congress authorized the Commission to require the carriers to keep detailed accounts and eventually repay the increased rates if found unlawful. To allow judicial suspension [of carrier-made rate increases.] would disturb this careful balance of interests." (emphasis supplied).

29. Certain petitioners, however, are trying to alter this explicit statutory scheme by having the Commission cancel or reject AT&T's tariff filing without an evidentiary hearing. They would thus deny the carrier its right to place increased rates in effect if the Commission has not adjudged the carrier's claim to higher earnings within the time provided for notice and suspension. Petitioners claim justification for such extraordinary action on the grounds that: (1) AT&T's present rates were somehow prescribed by the Commission's 1972 Phase I Decision in Docket 19129, and under Section 205 of the Act, AT&T cannot file rates producing higher earnings without the Commission's prior permission; (2) AT&T's tariff filing is unlawful on its face; and (3) the material submitted in support of AT&T's tariff filing does not comply with the Commission's rules. For the reasons set forth below, none of these constitutes grounds for rejecting the tariff filing.

2. The Commission Did Not By Its Phase I Decision Prescribe Bell's Present Interstate Rates.

30. As certain of the petitioners recognize, Section 205 of the Communications Act empowers the Commission only "after full opportunity for hearing" to prescribe a carrier's rates and to order that the carrier shall not thereafter place in effect any rates "other than the charge so prescribed." 47 U.S.C. §205.* Thus, AIA argues, for example, that AT&T's present rates are "agency made rates," that in Phase I of Docket 19129 the Commission "prescribed rates" based on its rate of return finding, and that AT&T must therefore seek the Commission's special permission before filing rates designed to produce an increased rate of return (AIA, pp. 11, 12, 18; see also ANPA, pp. 13-14; Ad Hoc Comm., pp. 4-6).

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* Section 205 provides, in relevant part:

> "Whenever, after full opportunity for hearing, . . . the Commission shall be of the opinion that any charge . . . of any carrier or carriers is or will be in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum charge or charges to be thereafter observed . . . and to make an order that the carrier . . . shall not thereafter publish, demand, or collect any charge other than the charge so prescribed, or in excess of the maximum or less than the minimum so prescribed. . . ."

31. The ordering paragraphs of the Commission's Phase I Decision did not, however, prescribe AT&T's rates and did not order the carrier to thereafter refrain from charging rates different from those that were subsequently filed to raise Bell's interstate rate of return level. 38 F.C.C. 2d 213, 251 (1972).* Rather, the Commission acknowledged that the tariff changes filed by Bell in response to the Phase I Decision were carrier-made rates, noting that the choices of the particular rate elements to be increased were made entirely by Bell. 38 F.C.C. 2d 984, 987 (1973). The Commission's review of these rates and its order on January 12, 1973 (38 F.C.C.2d 984), granting permission to file the rates was not, as some petitioners suggest, for the purpose of prescribing the rates. (E.g., Ad Hoc Comm., pp. 5-6; ANPA, p. 12). The Commission's examination of the rate proposals was to aid in the exercise of its discretionary suspension and investigatory powers, see American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 538-39 (1970); Associated Press v. FCC, 448 F.2d 1095, 1104 (D.C. Cir. 1971); and further, to grant AT&T permission to file under

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* The Phase I Decision stands in sharp contrast to the explicit language the Commission has used on other occasions when it has actually prescribed rates pursuant to Section 205. In Western Union Telegraph Co., 27 F.C.C.2d 515, 549 (1971), for example, the Comission ordered:

> "[T]he rates for Telex Service and Public Message Telegraph Service presently contained in the tariffs of Western Union are PRESCRIBED by the Commission as the maximum reasonable rates for such services under Section 205 of the Communications Act, and no increase in such rates shall be made effective without prior permission of the Commission."

the Commission's then-effective special permission requirement. See 33 F.C.C.2d 522, 525 (1972).*

31. From the outset of Docket 19129 the Commission has made it clear that none of the rates under investigation have been "prescribed" pursuant to Section 205. When it instituted the investigation, the Commission described as one of its purposes to determine "whether the Commission should prescribe just and reasonable charges . . . and, if so, what charges should be prescribed." 27 F.C.C.2d 151, 162. The Commission's Phase I Decision did not mark the end of the investigation, and thus, the Commission cannot yet have decided whether or what rates to prescribe.

32. Indeed, the Commission has repeatedly emphasized that rates filed by Bell to implement the Commission's rate of return determination in Phase I of Docket 19129 are carrier-initiated rates and are subject to further Commission investigation as to their lawfulness and possible refund under Section 204 of the Act. See, e.g., 30 F.C.C.2d at 504; 38 F.C.C.2d at 246, 251; 38 F.C.C.2d at 985-87.

34. Since prescribed rates would be protected from refund under the doctrine of Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Ry., 284 U.S. 370, 390 (1932), the continuation of Bell's

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* The Commission's special permission rule was subsequently held unlawful in American Telephone & Telegraph Co. v. FCC, 487 F.2d 865 (2d Cir. 1973), on grounds that it effectively resulted in an invalid prescription of Bell's rates. See our discussion at pp. 36-37, infra.

contingent refund obligation for all the rates under investigation in Docket 19129 is flatly inconsistent with any prescription of rates in the Commission's Phase I Decision.*

35. In circumstances strikingly similar to the present situation, the Commission held that it had not prescribed rates when it found in Docket 16258 that Bell's earnings exceeded the then allowable 7.0-7.5 percent range and ordered Bell to file rate reductions to bring its rate of return within that range. 12 F.C.C.2d 833 (1967). The Commission held that AT&T's filing pursuant to the Commission's rate of return decision in Docket 16258, the Commission's review of data supporting the tariff revisions made at the conclusion of its rate of return finding, and its decision concerning suspension and investigation do not "constitute approval or prescription of such schedules." (Id. at 834.)** Thus, neither the Commission's past regulation of Bell's

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* As evidence of prescription in Docket 19129, some petitioners point to the portion of the Commission's Phase I order that cancelled rates designed to produce a 9.5 percent return on Bell's interstate operations. (ANPA, p. 12; AIA, p. 3; Ad Hoc Comm., p. 3). These petitioners fail to recognize, however, that when the Commission determines charges to be unlawful, it can either order the unlawful charges ended or prescribe lawful charges pursuant to Section 205 of the Act. These are two separate and distinct powers of the Commission and a decision to order unlawful charges removed is not the equivalent of prescribing lawful charges, even if the Commission "knew to a certainty what AT&T would do if given a free hand" to remedy the unlawfulness. National Association of Motor Bus Owners v. FCC, 460 F.2d 561, 566 (1972); see also 32 F.C.C. 2d 619, 622 (1971).

** In Public Utilities Commission v. United States, 356 F.2d 236 (9th Cir.), cert. denied, 385 U.S. 816 (1966), the Commission was held not to have prescribed rates when, as a result of the Commission's continuing surveillance of Bell's earnings, Bell agreed to file rate reductions that would decrease interstate earnings by about $100 million.

earnings nor the Commission's orders in Docket 19129 support petitioners' contention that Bell's present interstate rates were prescribed in the Commission's Phase I Decision pursuant to Section 205 of the Act.

36. The Commission's Phase I Decision could not, in any event, constitute a valid prescription of rates. Section 205 requires that a carrier be afforded "full opportunity for hearing" before its rates can be prescribed, but Phase I of Docket 19129 was limited to the question of what overall return was fair for Bell's interstate operations. The Commission did not consider, for example, what investment base that percentage return is properly applied to in arriving at the ultimate interstate revenue requirement. Bell contends in Phase II that the capital employed in its interstate operations is considerably greater than the rate base used in formulating the interim rate increase following Phase I. Therefore, prescription of rates at their level following the Phase I rate increases would deny Bell its opportunity to show that such rates fall short of producing Bell's full revenue requirement, even at an 8.5-9.0 percent earnings level.

37. In addition, the Phase I Decision cannot be a valid prescription of rates because the Commission did not make the requisite finding under Section 205 that the rates filed by Bell were "just and reasonable." The Court of Appeals for the Second Circuit held in American Telephone & Telegraph Co. v. FCC, 449 F.2d 439, 450 (2d Cir. 1971):

> "The Commission's authority to prescribe rates and pratices is derived from §205(a) of the Communications Act. That authority is not unlimited . . . . [T]o prescribe a rate [the Commission] must find that the rate is 'just and reasonable.' Valid findings of this kind are therefore essential to any exercise by the Commission of its authority under §205(a)." (Emphasis supplied.)

The Court emphasized the requirement of explicit findings "in the terms of the statute" (id. at 450-51):

> "[T]he absence of a basic or jurisdictional finding of the kind here involved cannot be justified on the ground that some other and different finding by inference or implication meets the statutory standard."

Thus, the Court of Appeals found that the Commission's refusal to make "the essential statutory finding[s]" required by Section 205 had rendered invalid the Commission's attempted prescription of AT&T's rates and practices. 449 F.2d at 450.

38. The Commission has similarly refused to make such findings with respect to AT&T's rates in Phase I of Docket 19129, stating expressly that "we [the Commission] did not find as a matter of law that [AT&T's] new rate schedules were just, reasonable and free of undue discrimination within the meaning of Sections 201-202 of the Communications Act, and we specifically reserved the resolution of all such questions to further hearings." 42 F.C.C.2d 293, 301 (1973). Petitioners cannot, therefore, support their claims that the Commission somehow prescribed rates in its Phase I Decision by determining only Bell's allowable interstate rate of return for 1972. Since the Commission did not make the findings required by Section 205, its Phase I

order is not a prescription of Bell's interstate rates.

39. In making its argument that the Commission had prescribed rates within the meaning of Section 205, AIA contends that the Commission had in its 1972 decision "prescribed" a rate of return and that AT&T is thus barred from filing rates which exceed such return (e.g., AIA, p. 16). The language of Section 205, however, refers to the prescription of a "charge" or "charges" and there is no statutory language that refers to prescribing a rate of return.* The statutory language of "charge" refers to the prescription of specific rates for a carrier's service. See American Telephone & Telegraph Co. v. FCC, supra, 449 F.2d at 450.

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* Ad Hoc Committee cites a phrase from the Commission's opinion on reconsideration of its Phase I Decision referring to a prescription of 8.5-9.0 percent as the range of reasonableness for AT&T's interstate return. Ad Hoc Comm., p. 4; 42 F.C.C.2d 293, 300 (1973). Read in the context of the Commission's entire opinion, it is clear that the Commission was determining AT&T's allowable rate of return under 1972 economic conditions and not prescribing prospective "charges" within the meaning of Section 205 of the Act. The Commission recognized that the rates filed by AT&T after the Phase I Decision were carrier-initiated and not agency-made rates, expressly refusing to find the rates "just, reasonable and free of undue discrimination" under Sections 201-202 of the Act, and it continued AT&T's contingent refund liability for the rates which is itself inconsistent with having prescribed lawful rates under Section 205. 42 F.C.C.2d at 301.

40. In its 1972 Decision in Phase I of Docket 19129 the Commission made it clear that its finding was the rate of return that "Bell should be permitted to earn on its interstate operations at this time." 38 F.C.C.2d 213, 245 (1972) (emphasis supplied). The Commission explained that its determination represented the rate of return "warranted under current and immediately foreseeable economic and financial circumstances for Bell's interstate and foreign communications services." Id. at 227.

41. None of the petitioners controvert the fact that there have been dramatic changes in financial and economic conditions since the Commission's 1972 decision. The significant changes that have substantially increased Bell's cost of capital have been fully documented in the supporting materials submitted with the tariff filing. See, e.g., Bell Statements 3, 4, and 5. For example, as noted above (para. 9), the Commission based its rate of return finding on a current cost of long-term debt of 7 1/4 to 7 1/2 percent (38 F.C.C.2d at 230-31). In the past year Bell's long-term debt costs have ranged from 8.7 to over 10 percent (see paras. 10, 11, supra). The Commission further found in 1972 that Bell's embedded cost of debt of 6.0 percent would not significantly increase in the immediately foreseeable future (38 F.C.C.2d at 230), but, in fact, Bell's embedded cost of debt now stands at 6.9 percent. Similarly, in terms of the

current and expected rates of inflation, interest rates, and a number of other critical financial measures, the economic conditions of today are materially different from those at the time of the 1972 decision. See, e.g., Bell Statement 5, Atts. A, B, C, D, F, G, and J.

42. It is clearly established that a rate of return finding by a regulatory commission is applicable only so long as the same economic and financial conditions prevail. Indeed, there is a constitutional requirement that a regulated utility be permitted to earn a rate of return which reflects the current cost of money in the capital markets. The Supreme Court has clearly established the necessity of recognizing current financial and economic conditions in determining the appropriate level of earnings for a regulated utility. In Lincoln Gas & Electric Light Co. v. Lincoln, 250 U.S. 256, 268 (1919), the Court ruled that because of changing conditions over just a few years, "what would have been a proper rate of return for capital invested in [public utilities] a few years ago furnishes no safe criterion for the present or for the future." And in Bluefield Water Works v. Public Service Commission, 262 U.S. 679, 692-93 (1923), the Court again stressed the need for changes in rate of return in response to changing economic conditions:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on invest-

> ments in other business undertakings which are attended by corresponding risks and uncertainties; . . . . A rate of return may be reasonable at one time and become too low by changes affecting opportunities for investment, the money market and business conditions generally." (Emphasis supplied).

See also, F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 604-05 (1944); F.P.C. v. Natural Gas Pipeline Co., 315 U.S. 575, 596-97 (1942), affirming 120 F.2d 625 (7th Cir. 1941); United Ry. & Electric Co. v. West, 280 U.S. 234, 249 (1930) ("The problem [of fair return] is one to be tested primarily by present day conditions.")

43. The interplay of these principles recognized by the Supreme Court and the provisions of the Communications Act relating to the effectiveness of carrier-initiated rates is well illustrated by the course of events at the time Bell initiated rate increases in 1970. The Commission had determined in 1967 in Docket 16258 that Bell's allowable return, under then existing conditions, was in the 7.0-7.5 percent range. 9 F.C.C. 2d 30 (1967); 9 F.C.C. 2d 960 (1967). When in November of 1970, Bell filed rate increases designed to raise its earnings substantially above that level because of increases in its cost of capital, the Commission recognized the right of a carrier to initiate rate changes and ordered an investigation in Docket 19129 of Bell's claim to a higher earnings level. 27 F.C.C. 2d 149 (1971); 27 F.C.C. 2d 151 (1971). When the Commission instituted its investigation in Docket 19129, it stressed that

"changes occurring in the capital structure and the costs thereof of AT&T subsequent to the 1967 decision, particularly the net increase in embedded cost of debt, were of particular importance," and recognized that "changes had taken place in the various elements which make up the cost of capital since the Commission's 1967 decision in Docket No. 16258" (27 F.C.C. 2d at 154-55). This led to the Commission's Phase I Decision which determined "what rate of return is warranted under current and immediately foreseeable economic and financial circumstances . . . ." (38 F.C.C. 2d at 227).

44. Thus, the Commission has in the past recognized that changing economic and financial conditions have a critical impact upon the required rate of return for Bell's interstate operations. In the more than two years since the Commission's last rate of return determination in Phase I, there have been financial and economic changes greater in magnitude than those preceding the Commission's consideration of Bell's rate of return in 1972. Under the Communications Act, and under the decisions of the Supreme Court, such changes require a higher rate of return.

45. The Communications Act provides the procedures by which the Commission can investigate the full impact of the changed financial and economic conditions since 1972. Under the Act the Commission is empowered to institute an investigation of a carrier's rate filing. 47 U.S.C. §204. If the investigation

is not completed in the time required for public notice and any suspension period the Commission may order, the Act requires that the rates become effective subject, at the Commission's option, to refunds in the event the rates are eventually held unlawful. 47 U.S.C. §204. These procedures are fully consistent with the Commission's previous treatment of Bell's interstate rate increases and represent the congressionally-established balance of interests in the Communications Act that the courts have consistently upheld.

46. In sum, the Commission in its orders in Phase I of Docket 19129 did not prescribe rates within the meaning of Section 205 and cannot now bar the filing of carrier-initiated rates.

3. The Other Contentions Advanced By Petitioners Provide No Valid Basis for Rejecting AT&T's Tariff Filing.

47. Certain petitioners urge summary rejection of AT&T's tariff filing on the grounds that it would be disruptive of other Commission proceedings involving private line rates (e.g., ARINC, pp. 11-14; AP, p. 11; CNS, p. 7); that it would involve the "pancaking" of private line rate increases, especially as to TELPAK rates (e.g., ATA, pp. 3, 25; also ARINC, p. 2); or simply that the newly filed rates are too high (e.g., AP, p. 11; CNS, p. 7). None of these contentions provide a lawful basis for rejection of a tariff filing.

48. Regardless of the grounds put forward, petitioners cannot escape the fact that a rejection of a tariff filing is effectively a prescription of existing rates and invalid without the hearings and findings required by Section 205 of the Act. In American Telephone & Telegraph Co. v. FCC, 487 F.2d 865 (2d Cir. 1973), the Court of Appeals reviewed a Commission rule that prohibited AT&T from filing rate changes for any of its major services without first obtaining special permission from the Commission. The Commission had adopted this rule for precisely the purpose that ARINC and others urge here as a reason for the Commission to reject AT&T's filing: major rate revisions in AT&T's principal interstate services would be disruptive of a pending Commission investigation. See 487 F.2d at 870. The Court held, however, that this bar against filing rate changes violated the Act's regulatory scheme under which the Commission may not prevent AT&T from initiating rate changes prior to completion of hearings and findings as to the rates' lawfulness. The Court found "determinative" the fact that:

> "[T]he special permission provision under review has the same effect as a Section 205 rate prescription. It compels the carrier to adhere to a fixed rate which can be revised only with prior Commission permission. Section 205 provides, however, that before the Commission can exercise that authority hearings must be held and prescribed rates must be found just and reasonable . . . . Under the circumstances of this case, we see no difference between a 'prescription' of new rates and a 'freeze' of old rates." (487 F.2d at 874-75.)

The Commission cannot now reject AT&T's instant rate filing without similarly "freezing" or "prescribing" Bell's existing rates. Yet, as we have demonstrated above, the Commission has not made the findings required to prescribe such rates pursuant to Section 205, and has, in fact, stressed that it made no prescription of rates in its Phase I Decision.

49. In other cases where agencies have not previously prescribed rates, courts have made it clear that tariffs cannot be rejected on asserted grounds that they are unlawfully high as a matter of law. The petitioners in Associated Press v. FCC, 448 F.2d 1095, 1104 (D.C. Cir. 1971), for example, made the same arguments that petitioner ATA (at p. 3) presses here--that AT&T should not be allowed to "pyramid" or "pancake" a series of private line rate increases and "earn more than the rate of return previously authorized by the Commission." See 448 F.2d at 1102. The Court of Appeals, however, held squarely against the Commission's authority to reject tariffs on these grounds (448 F.2d at 1104-05):

> "Whether the AT&T rates in general or the TELPAK rates in particular are too high is a matter for the Commission to decide after investigation and hearing. The Commission has no authority to reject rates summarily on the ground that they are unlawfully high.
>
> * * *
>
> We know of no rule of law that a proposed rate increase must be rejected merely because the lawfulness of a prior rate increase has not been finally determined."

50. Under an analogous statutory scheme, the Federal Power Commission was also held powerless to prevent repeated rate increases (a series of four increases) by a natural gas wholesaler during a period in which the FPC had under investigation earlier increases by the same company, Willmut Gas & Oil Co. v. FPC, 294 F.2d 245, 249 (D.C. Cir. 1961), cert. denied, 368 U.S. 975 (1962):

> "[The Natural Gas Act] provides for investigation of changed rates which have been filed; but it does not contemplate that the Commission may refuse to file a tendered new schedule showing changes in rates or that it may summarily reject or disallow the new schedule without a hearing.

In response to charges that the FPC should have rejected the company's latest filing as unlawful "on its face", the Court held (294 F.2d at 250):

> "The Commission was not authorized to reject the filing in this case on any ground appearing on its face. Its only statutory authority was to enter upon a hearing concerning the lawfulness of such rates, to suspend their effectiveness for a time, and after full hearing to make such orders with reference thereto as would be proper in a proceeding under Section 5(a) of the Act. [15 U.S.C. §717d(a).]"

51. The FCC has no greater authority under the Communications Act than the FPC has under the Natural Gas Act to prevent the effectiveness of carrier-initiated rates without a hearing. American Telephone & Telegraph Co. v. FCC, 487 F.2d 865, 878-79 (2d Cir. 1973). Thus, the effect of rejecting AT&T's tariff filing on grounds that AT&T is allegedly pancaking rate increases, or that the rate increases allegedly will produce earnings that are too high, or because any other deficiencies are alleged to appear "on the face" of the tariffs would be to deny AT&T its right under the Communications Act to a hearing and findings on the lawfulness of its rate changes.

52. Certain petitioners nevertheless cite Municipal Light Boards v. FPC, 450 F.2d 1341, 1345 (D.C. Cir. 1971), cert. denied, 405 U.S. 989 (1972), for the Commission's authority to reject AT&T's tariffs when "no dispute of fact is involved" and when questions of law and administrative policy are such that "there is neither a dispute as to material facts nor a need to ventilate the underlying facts to aid in policy determination." (ANPA, pp. 9; ARINC, p. 7). Even assuming the FCC has the same authority to reject tariffs as the FPC, the Municipal Light Boards case has no application to AT&T's present tariff filing. The Court of Appeals said in that case that rejection "should mark the clear case of a filing that patently is either deficient in form or a substantive nullity." 450 F.2d at 1345. Elaborating upon these criteria, the Court continued (id. at 1346):

> "A 'rejection' of a filing . . . is appropriate where the filing is so deficient on its face that the agency may properly return it to the filing party without even awaiting a responsive filing by any other party in interest.
>
> "It is a 'peremptory form of response to filed tariffs' which classically is used not to dispose of a matter on the merits but rather as a technique for calling on the filing party to put its papers in proper form and order." (Emphasis supplied.)

The contentions advanced by the petitioners, on the other hand, do deal with the substantive merits of the tariff filing. The petitioners advance arguments disputing facts as to the precise magnitude of the increase in Bell's cost of capital since 1972. Indeed, to the extent there is no dispute of fact, it is that current economic and financial conditions are materially different from those in 1972. That is, no petitioner is disputing the fact that Bell is now paying significantly more for long term debt than the 7-1/4 to 7-1/2 percent the Commission used in determining Bell's rate of return in Phase I of Docket 19129. Clearly, then, AT&T's filing cannot be held a "substantitive nullity" and rejected on the basis of the Municipal Light Boards case.

53. Petitioners cite still other cases involving the Federal Power Commission that are said to demonstrate the power of the FCC to reject AT&T's tariffs. The decision most fre-

quently cited is the Permian Basin Area Rate Cases, 390 U.S. 747 (1968), in which the Supreme Court upheld the FPC's authority to impose a moratorium on the filing of natural gas rates higher than those the Commission had previously prescribed as just and reasonable. Clearly, the FCC's 1972 decision in Docket 19129 did not impose a moratorium on rate increases as in Permian. The FPC's action in Permian took place only after it had prescribed rates based upon hearings and the requisite findings. As the Court of Appeals recognized in AT&T v. FCC, 487 F.2d 864, 877 (2d Cir. 1973):

> "[In Permian] the moratorium on rate changes by gas companies was imposed after the FPC had prescribed agency made rates pursuant to its prescription power, i.e. after a full hearing and a determination that the prescribed rate was just and reasonable. 390 U.S. at 777-79." (Emphasis supplied.)

Since AT&T's current rates are not "agency-made rates" and were not prescribed by the FCC in Phase I of Docket 19129, Permian does not stand as authority for the Commission to reject AT&T's rate increases.*

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* Petitioner ATA (at pp. 18-19) cites several FPC cases that involved the Commission's authority to dictate rates under the special circumstances of imposing a condition upon temporary and initial certificates of public convenience and necessity granted natural gas producers under Section 7 of the Natural Gas Act (15 U.S.C. §717f). E.g., FPC v. Texaco, Inc., 377 U.S. 33 (1964); United Gas Improvement Co. v. Callery Properties, Inc., 382 U.S. 223 (1965); FPC v. Hunt, 376 U.S. 515 (1964); Atlantic Refining Co. v. Public Service Commission, 360 U.S. 378 (1959). These situations are entirely different from the present situation because "[t]he power granted to the Commission in §4 [comparable to the FCC's regulation of common carriers' rates] does not come into play until after the initial certification of the natural gas into interstate commerce has been granted under §7." FPC v. Hunt, supra, 376 U.S. at 522.

54. Similarly, FPC v. Tennessee Gas Transmission Co., 371 U.S. 145 (1962), and FPC v. Natural Gas Pipeline Co., 315 U.S. 575 (1941), cited by AIA (pp. 16, 19), are wholly inapposite. These were cases in which the Court upheld the FPC's authority, after full opportunity for hearing, to make a rate of return determination before resolving questions of cost allocation and rate structure in subsequent proceedings. They did not involve the rejection of rate increases filed after the agency's initial decision on allowable rate of return.*

55. Petitioners also cite a number of other cases that have no bearing whatever on the question of whether the FCC has authority to reject tariffs of a common carrier on grounds that the rates would be unlawfully high.** These cases all involved some aspect of the FCC's authority to regulate broadcasting, and as the Court of Appeals ruled in

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* Similarly irrelevant is the Ingot Molds case, American Commercial Lines, Inc. v. Louisville & Nashville R.R., 392 U.S. 571 (1968), cited by ATA at p. 21. That case did not involve a moratorium on rate increases by the Interstate Commerce Commission nor had the ICC summarily rejected proposed rate revisions by the railroads without hearings and findings.

** E.g., United States v. Storer Broadcasting Co., 351 U.S. 192, (1956); United States v. Southwestern Cable Co., 392 U.S. 157 (1968); General Telephone Co. v. FCC, 413 F.2d 391 (D.C. Cir.), cert. denied, 396 U.S. 888 (1969); Kessler v. FCC, 326 F.2d 673, 681 (D.C. Cir. 1963); Harvey Radio Laboratories, Inc. v. United States, 289 F.2d 458, 460 (D.C. Cir. 1961); Harbenito Broadcasting Co. v. FCC, 218 F.2d 28 (D.C. Cir. 1954).

Press Wireless Inc. v. FCC, 204 F.2d 372 (D.C. Cir. 1959), involved rejection of a tariff because the petitioner was not licensed to provide the service -- a basis for rejection not remotely applicable to the present proceedings.

AT&T v. FCC, 487 F.2d 864, 876 (2d Cir. 1973), such cases are "wholly unpersuasive" in arguing to override restrictions on the Commission's regulation of common carriers' rates, especially as provided in Sections 203-05 of the Act.

56. Thus, the judicial precedents confirm what the provisions of the Communications Act make clear. Absent a prior prescription of rates, the Commission has no authority to reject AT&T's tariff filing without holding hearings and without making findings on a current record.

4. Allegations That AT&T's Tariff Filing Does Not Comply With The Commission's Rules Are Not Grounds For Rejecting The Tariffs.

57. Petitioners ARINC (pp. 3, 10), ATA (p. 26), and AIA (pp. 23-25), allege that AT&T's tariffs should be rejected because they fail to meet the requirements of Commission Rule 61.38, which specifies the material to be submitted with the tariff filing. 47 C.F.R. §61.38. ARINC contends, for example, that "AT&T has failed to establish prima facie that the increases in Telpak and station equipment charges would be reasonable as required by Section 61.38 of the Rules." (p. 3). ATA and AIA rely on a discussion by their consultant, Mr. Charles W. King (which is appended to their petitions), and they claim this demonstrates AT&T's failure to comply with Rule 61.38.

58. The voluminous material filed by AT&T in support of its filing is substantially similar to (indeed, more extensive

than) the materials filed in support of previous tariff submissions. This type of material has been held in full compliance with the requirements of Rule 61.38. Similar contentions by many of the same petitioners as here were made as grounds for rejecting AT&T's private line rate filing in December 1971. The Commission held that such allegations about failure to provide adequate supporting data under Rule 61.38 did not constitute grounds for rejection (33 F.C.C. 2d 522, 523 (1972)):

> "In our judgment, the cost, revenue, and other data submitted by AT&T in justification of the proposed tariff changes sufficiently satisfies the requirements of §61.38 to permit the acceptance for filing of the new schedules. It is a separate and distinguishable issue, however, whether the submitted data establishes that the proposed tariffs are just and reasonable and otherwise lawful under the Communications Act. The resolution of that issue should be made through the hearing process."

59. Thus, data submitted pursuant to Rule 61.38 are not required to establish "that the proposed tariffs are just and reasonable and otherwise lawful under the Communications Act." 33 F.C.C. 2d at 523. Indeed, the Commission stated this principle at the conclusion of Phase I of Docket 19129 with respect to AT&T's filing in January 1973 (42 F.C.C. 2d 293, 300):

> "The Trial Staff makes the contention that any tariff filed by a carrier must be rejected and returned to the carrier if it is not accompanied by a prima facie showing that all of the rates therein are just, reasonable and free of undue discrimination, i.e., in full compliance with Sections 201 and 202 of the Act . . . . We disagree . . . .

> The Trial Staff cites no statutory or other support for the sweeping proposition that tariffs must be rejected that are not accompanied by a prima facie showing of compliance with Sections 201 and 202 of the Act . . . . [W]e have heretofore made it clear that the purpose of obtaining this information [accompanying a tariff filing] is not to require the carrier to make a prima facie showing of lawfulness on penalty of summary rejection but 'is to elicit information and data which will facilitate the Commission's judgment as to whether such proposed tariffs present questions of lawfulness which warrant our investigation and hearing.' (our underlining) 40 FCC 2d 147; p. 153 (1973)."

See also, American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 538-39 (1970); Associated Press v. FCC, 448 F.2d 1095, 1104 (D.C. Cir. 1971).*

60. In a recent opinion denying a petition to reject AT&T's recent WATS filing, the Chief of the Common Carrier Bureau stated:

> "Section 61.38 of our rules was not violated here merely because AT&T may have presented no defensible rate-making basis for the rate changes and may not be able to justify the changes at any further hearing or investigation. Our rules require

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* In the Associated Press case, the Court of Appeals held that submissions pursuant to the Commission's tariff filing rules need not show that the rates are prima facie justified. 448 F.2d at 1104. It recognized that such filing rules were merely to provide information to aid the agency to decide whether an investigation and suspension of a tariff change is needed and that such rules do not confer "important procedural benefits upon individuals" (id.). The court recognized that "this information may be sufficient even though it does not amount to a prima facie case" (id.). Petitioners, such as ARINC, thus confuse the standards for Commission review of data, ancillary to exercising its discretion as to the need for further investigation, with the standards for determining the lawfulness of rates after full hearing.

> the submission of the data, information and rate-making principles upon which the carrier relies for its proposal irrespective of whether such material is defensible . . . . In the present instance, AT&T's Section 61.38 showing suffices for an appropriate Commission disposition of this filing." (46 F.C.C. 2d 213, 214 (1974); emphasis supplied).

61. It has thus been established that disagreements as to the substance of the data submitted pursuant to Rule 61.38 to support a carrier's tariff changes do not constitute a valid ground for rejecting a tariff filing. In any event, the material submitted by AT&T does, in fact, fully meet the requirements of Rule 61.38. Petitioners rely on the comments of Mr. King in support of their contentions that AT&T did not comply with Rule 61.38. It is clear from even the most cursory reading of Mr. King's contentions that they represent at most his personal views as to what kinds of supporting data are desirable or preferable.* If Mr. King has a different opinion as to the substance of Bell's extensive cost, traffic and revenue data, these allegations can be presented in the form of testimony at an evidentiary hearing. Such allegations in no way support the assertion that AT&T has failed to comply with Rule 61.38.

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* For example, Mr. King claims that Bell has not submitted a projection of costs for a three-year period beginning at the date of the filing. In fact, as shown in AT&T Cost Data Volume 1, Sections 2, 3 and 4, as well as numerous supporting volumes, such data were actually presented. Similarly, contrary to Mr. King's contentions, estimates of cross-elasticities were presented (see, e.g., Traffic and Revenues Data Volume 6). While Mr. King contends that such data do not satisfy his special interpretation of what is required, he presents no legal support for his interpretation as superior to the one which has customarily been recognized and accepted in filings with this Commission.

IV. Other Petitions to Suspend

62. In its petition to suspend Datran complains about the exclusion of Dataphone Digital Service (DDS) from the general rate increase. As pointed out in the material supporting the filing (Bell Statement 6, pp. 26-67), AT&T's January 3, 1975, tariff revisions provided for rate increases in all domestic rate elements in Tariff 260 with the exception of the rates for the Series 7000 services and for any items that were filed to become effective after September 1, 1974.* Since the DDS rates became effective December 15, 1974, they were thus not covered by the tariff revisions filed a few weeks later.

63. The cost material filed in support of the DDS rates, effective December 15, 1974, reflects the same type of increased cost elements as those reflected in AT&T's filing herein. Thus, on January 6, 1975, AT&T, pursuant to Commission Order,** submitted its direct case in support of its DDS rates. Included in that filing were cost estimates revised to reflect the new wage adjustments, a higher cost of capital (an incremental cost

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* Datran erroneously alleges in its petition that "No reasons appear to be afforded for exempting Series 7000 services from the proposed general rate increase" (p. 3). The reasons for not making the tariff revisions applicable to Series 7000 were set forth at pages 26-27 of Bell Statement 6. As noted therein, the rates for these television program transmission services have been the subject of several Commission proceedings, in which certain agreements concerning the applicable rates were reached by the parties involved, including the participation of the Common Carrier Bureau. For example, a stipulation agreement governing the level of certain television rates until December 31, 1975 was adopted by the Commission in its Order, released December 11, 1973, in Docket 18684.

** F.C.C. Order 74-1370, released December 16, 1974, establishing Docket F.C.C. No. 20288.

of capital of 11 3/4 percent), and other increased costs which form the basis for the general rate increases proposed herein. (See FCC Docket No. 20288, Bell Ex. 18). There is no merit whatever to Datran's contention that failure to increase the December, 1974 DDS rates is in some way unjust and unreasonable. It was shown in Docket 20288 that the filed DDS rates continue to be appropriate in that volatile competitive environment. DDS is a service offering competitive with services offered or to be offered by Datran. The rate levels for such a service are set to yield an optimum contribution so that the rates for Bell's other services, including MTS, can be set at levels lower than would otherwise be required.*

64. National Data's petition to suspend takes issue particularly with the proposed WATS rate increases at the shorter distances. National Data recognizes (at p. 8) that the WATS rates are being revised in order to maintain rate relationships with MTS, and that proportionately higher increases are proposed for shorter haul MTS to improve the revenue/cost relationships. But National Data fails to explain why it is inappropriate to reflect the relatively higher costs at short distances or to

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* Datran claims that AT&T has conceded that its stated objective of choosing rates which yield as large a contribution as practicable would be better served by increasing the DDS rates. (Datran Pet., p. 6, fn. 13) Datran supports that assertion by inexcusably quoting only the last part of one sentence in the middle of a paragraph in a Bell exhibit in Docket 20288 in such a way as to completely misrepresent its meaning. The paragraph from which Datran selectively quotes explains that increasing DDS rates may well not increase contribution because the results are so highly sensitive to the rates assumed to be offered by Datran. (FCC Docket No. 20288, Bell Ex. 19, p. 4).

maintain consistent rate relationships between MTS and WATS. Ironically, National Data concurs in the filing of the Council, whose petition views with favor rate revisions designed to relate rates more closely to the relevant costs.

65. California's petition to suspend is essentially directed to the operation of current separations procedures. It contends (pp. 2, 3) that the application of a portion of the separations formula, known as the Composite Station Rate (CSR) ratio, hurts states (such as California) with CSR ratios above unity but helps states with such a ratio below unity. We do not agree with California's computation of the anticipated separations effect. In any event, these are matters which should be addressed in proceedings involving the formulation of jurisdictional separations procedures. It is, of course, a consequence of rate revisions (interstate or intrastate) that there will be changes in growth rates and relative usage and that shifts between interstate and intrastate jurisdictions might take place in either direction. This, however, is no ground to suspend the instant tariff filing.

Conclusion

For the reasons stated herein, those petitions of the users seeking rejection, cancellation or withdrawal of the tariff filing should be denied. The asserted grounds for such extraordinary relief are flatly contrary to the explicit statutory scheme of the Communications Act and have been expressly denied in the numerous decisions discussed above.

While it is true that the Commission has discretion under Section 204 of the Communications Act to suspend the tariff filing for a period of up to three months from its effective date, as the petitions to suspend request, the petitioners present no reasons why suspension is in any way necessary to protect their interests or the public interest generally. An accounting order without the full statutory suspension will fully protect the interests of customers, irrespective of the outcome of any investigation the Commission may order. On the other hand, a suspension would irrevocably deny the carrier just and reasonable rates urgently needed during the suspension period. The extensive material already presented to the Commission demonstrates both that the Bell System's current level of interstate earnings is plainly

inadequate in light of present economic conditions, and that relief is needed without further delay.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/ John F. Preston, Jr.
John F. Preston, Jr.

By /s/ Thomas M. Eichenberger
Thomas M. Eichenberger

By /s/ Bennett Feigenbaum
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By /s/ Alfred A. Green
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By /s/ Howard J. Trienens
Howard J. Trienens

By /s/ Jules M. Perlberg
Jules M. Perlberg

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Chicago, Illinois 60603

Its Attorneys

February 5, 1975

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE & TELEGRAPH COMPANY, Long Lines Department Revision of Tariff F.C.C. No. 260	)	Transmittal No. 12241

ADDITIONAL COMMENTS ON FCC TRIAL STAFF PETITION TO SUSPEND

The American Broadcasting Companies, Inc., CBS INC. and National Broadcasting Company, Inc. (the "Network Companies"), hereby submit the following additional comments on the Petition to Suspend filed by the Common Carrier Bureau's Trial Staff in the above-captioned proceeding on January 28, 1975.[1/]

The Network Companies have also filed a Petition to Suspend Transmittal No. 12241 and do not oppose the Trial Staff Petition. However, in its Petition to Suspend the Trial Staff alleges[2/] that the Message Telecommunications Service (MTS) is subsidizing other interstate services of the American Telephone and Telegraph Company. This assertion is based upon the assumption that it is proper to base rate of return calculations

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1/ To the extent required by Section 1.45(c), permission is hereby sought to file these comments.

2/ At pages 4-5.

upon "Method 1" of the fully distributed cost studies submitted by AT&T in Docket 18128. Without here arguing the validity of such an assumption, with which the Network Companies are in strong disagreement, the Network Companies point out that this matter is currently in litigation in the AT&T Private Line rate case (Docket No. 18128). For reasons which we have stated in other pending proceedings, whatever action the Commission takes on the matters involved, it should not be based upon the assumption put forth by the Trial Staff concerning fully distributed costs and "Method 1", since this could well disregard or prejudge the matters before the Commission in Docket No. 18128. (See, for example, Further Statement of American Broadcasting Companies, Inc., CBS INC. and National Broadcasting Company, Inc., filed September 13, 1974, Docket Nos. 18128, 19919.)

Respectfully submitted,

AMERICAN BROADCASTING COMPANIES, INC.
CBS INC.
NATIONAL BROADCASTING COMPANY, INC.

By Joseph M. Kittner by NPL
Joseph M. Kittner

Norman P. Leventhal
Norman P. Leventhal

McKenna, Wilkinson & Kittner
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Washington, D. C. 20036

AMERICAN BROADCASTING COMPANIES, INC.

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Robert J. Kaufman by NPL
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CBS INC.

By Joseph DeFranco
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NATIONAL BROADCASTING COMPANY, INC.

By Howard Monderer
Howard Monderer by NPL
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Their Attorneys

February 6, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
LONG LINES DEPARTMENT	)	
	)	
Revisions of Tariff F.C.C. Nos. 263, 259, and 260 Rates, Respectively, for Long Distance Message Telecommunications Service, Wide Area Telecommunications Service and Private Line Service	)	Transmittal No. 12241

OPPOSITION
(To be acted upon by the Commission)*

American Telephone and Telegraph Company ("AT&T"), pursuant to Section 1.45 of the Commission's Rules, hereby opposes the petition by the American Newspaper Publishers

* ANPA addressed its petition to the Chief of the Common Carrier Bureau. The Chief of the Common Carrier Bureau does not have authority to act on ANPA's petition on the grounds alleged in that petition. Section 0.297 of the Commission's Rules delegates rejection authority to the Chief only as "to the rejection of tariffs as authorized by subsection (d)" of Section 203 of the Communications Act (which pertains to failure to give "lawful notice of [the] effective date" of any schedule entered for filing), which is not applicable here. In addition, ANPA's petition is directed to the same tariff revisions which are before the Commission for consideration in connection with various other petitions, including one filed by the instant petitioner. Accordingly, it appears appropriate that ANPA's instant petition be included in that consideration. We are, of course, serving a copy of this Opposition on the Chief of the Common Carrier Bureau.

Association ("ANPA") to reject the above-captioned tariff revisions. In support of this Opposition, AT&T respectfully states as follows:

1. On January 3, 1975, AT&T filed tariff revisions providing for increased charges for the Bell System's interstate services, to be effective March 4, 1975. On January 28, 1975, ANPA filed with the Commission a "Petition To Cancel or, in the Alternative, Suspend and Investigate." Contemporaneously, ANPA filed its Petition to Reject herein, and incorporated by reference its petition to the Commission.

2. On February 5, 1975, AT&T filed with the Commission its Reply to pleadings (including ANPA's petition to the Commission) requesting suspension and investigation, and in some cases also requesting cancellation, rejection or withdrawal, of the above-captioned tariff revisions. AT&T's Reply (pp. 21-46) shows that the petitions seeking rejection, cancellation or withdrawal of the tariff filing should be denied since the asserted grounds for such extraordinary relief are flatly contrary to the explicit statutory scheme of the Communications Act and have been expressly denied in numerous judicial and Commission decisions set out and discussed in that Reply. A copy of AT&T's Reply is attached hereto and is incorporated herein by reference. For the

reasons stated in the attached Reply, MPA's Petition to Reject should be denied.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/ John F. Preston, Jr.
John F. Preston, Jr.

By /s/ Thomas M. Eichenberger
Thomas M. Eichenberger

By /s/ Bennett Feigenbaum
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Its Attorneys

February 10, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT	)	
	)	
Revisions of Tariff F.C.C. Nos. 263, 259, and 260 Rates, Respectively, for Long Distance Message Telecommunications Service, Wide Area Telecommunications Service and Private Line Service	)	Transmittal No. 12241

REPLY

American Telephone and Telegraph Company (AT&T), pursuant to Section 1.773(c) of the Commission's Rules, hereby replies as follows to the pleadings* requesting suspension and investigation, and in some cases also requesting cancellation,

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* We are in receipt of petitions seeking suspension filed by the Council on Wage and Price Stability ("Council"); City of Chicago ("Chicago"); Executive Agencies of the United States ("Executive Agencies"); Trial Staff of the Common Carrier Bureau in Docket No. 19129 ("Trial Staff"); Mutual Broadcasting System, Inc. ("Mutual"); Intermountain Network, Inc. ("IMN"); Data Transmission Co. ("Datran"); American Broadcasting Companies, Inc., CBS, Inc., National Broadcasting Company, Inc. ("Networks"); National Data Corporation ("National Data"); Commonwealth of Pennsylvania ("Pennsylvania"); and State of California and Public Utilities Commission of California ("California"). Ad Hoc Telecommunications Committee ("Ad Hoc Committee") requests rejection of the filing. Petitions seeking cancellation, rejection or withdrawal or, as alternative relief, suspension and investigation have been filed by Commodity News Services, Inc. ("CNS"); American Newspaper Publishers Association ("ANPA"); Aeronautical Radio, Inc. ("ARINC"); Aerospace Industries Association of America, Inc. ("AIA"); Associated Press ("AP"); Air Transportation of America ("ATA"); and United Press International, Inc. ("UPI").

[The remainder of AT&T's Reply is reproduced at A. 399-448, supra.]

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT	)	
	)	Transmittal No. 12241
Revisions of Tariff F.C.C. No. 260, for Private Line Series 6000 Service	)	

To: Chief, Common Carrier Bureau*

OPPOSITION

American Telephone and Telegraph Company (AT&T), pursuant to Section 1.45 of the Commission's Rules, hereby opposes the "Petition to Extend Notice Period" applicable to the above-captioned tariff revisions for Private Line Series 6000 (Audio program transmission) Service, submitted by the American Broadcasting Companies, Inc., CBS INC., and National Broadcasting Company, Inc. (Networks). In support of this Opposition, AT&T respectfully states as follows:

1. On January 3, 1975, AT&T filed with the Commission (under Transmittal No. 12241) certain tariff revisions providing for generally increased rate levels applicable to various interstate services, including private line audio (Series 6000) program transmission services furnished under Tariff F.C.C. No.

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* As we discuss herein (para. 10), the Chief, Common Carrier Bureau does not possess the delegated authority to grant the relief requested by the Networks even if it were proper (which it is not).

260. In accordance with the notice requirements of Commission Rule 61.58, AT&T's tariff filing provided for a 60-day notice period, i.e., an effective date of March 4, 1975.

2. In their Petition (p. 12) the Networks request that "the Commission extend the statutory notice period for an additional 90 days" insofar as the rate revisions for the Series 6000 audio program transmission services are concerned. That is, the Networks request that the Commission order, after the fact and on an ad hoc basis, an extension of its notice requirement from 60 to 150 days. As we show herein, the Networks' requested relief -- which could result in deferral of rate revisions for a total of eight months -- is patently in violation of the Communications Act and the Commission's Rules, and if granted would constitute a gross abuse of Commission authority. The Networks have failed to establish grounds justifying extension of the maximum notice period specified in the Commission's rules.

3. The Networks seek to support their Petition by arguments directed essentially to the substance of the audio rate increase -- contending that the rate increase would impose an additional $1.7 million annual burden on the radio broadcasting industry and that the nature of the increase (across-the-board for each rate element of audio service) is

not justified. These arguments pertaining to the substance of the filing can be presented in any evidentiary hearing on the new audio rates. But they do not constitute grounds for extending the notice period.

4. As the Court of Appeals for the Second Circuit recognized, the purpose of the notice requirement for customers is to provide a "waiting period . . . designed to give the public the opportunity to review the tariff and to make any pertinent comments."* The Networks have failed to demonstrate how they are prejudiced by the existing notice requirements. There has been no showing that the Networks have not, much less could not, make an adequate review of the filed supporting data pertaining to the audio rate revisions in order to advise the Commission concerning the need for suspension and investigation.** Indeed, their actions indicate just the

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* American Telephone & Telegraph Co. v. F.C.C. 503 F.2d 612, 614 (2d Cir. 1974).

** The Networks complain about the "overwhelming volume of data filed by AT&T in support of its proposal" (p. 4) and that this is "the largest single rate filing in AT&T's history" (p. 7). But when placed in the context of the specific rate revisions for audio service (which constitute less than one percent of the overall revenue increase), the material is clearly not of a magnitude that would preclude review in the time required for submitting comments to the Commission as to whether suspension and investigation is necessary. Data setting forth the traffic and revenue analyses, and the incremental cost analyses, applicable to the audio services are essentially in four support volumes and comprise about 100 pages.

(Footnote continued on following page)

opposite. The Networks filed with the Commission a timely petition to suspend the tariff filing, containing their comments as to how the rate revisions would affect them. They did not indicate any inability to make a complete review of the tariff filing material concerning the audio services.*

5. The Commission has determined that its existing notice requirement is fully adequate for customers to review material submitted in support of tariff changes. In its Final Report and Order in Docket No. 18703, 25 F.C.C.2d 957 (1970), reconsideration denied, 40 F.C.C.2d 149 (1973), the

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(Footnote continued from preceding page)

Other cost data (such as the FDC material), which contain an audio portion, were no different in basic methodology than similar data with which the Networks were familiar as a result of their active participation in the proceedings in Docket Nos. 18128 and 18684.

The bulk of the supporting data is not related to the audio services. Such data as the material on the Long Distance Interstate (LDI) model and Incremental Network Cost (INC) System pertain to MTS and WATS. And even these data represent the same methodology as has been presented to the Commission in several filings in the past (such as the MTS filings in 1970 and 1973 and the WATS filings in 1973 and 1974).

* Indeed, the Networks complain (at pp. 7-8) -- not that the supporting material is too extensive to review -- but that the data somehow are "insufficient" to prove justness and reasonableness of the audio rate revisions. AT&T has in fact submitted data to demonstrate the lawfulness of the rate revisions. In any event, it is well established that the purpose of the tariff filing material is to aid in determining whether "such proposed tariffs present questions of lawfulness which warrant [Commission] investigation and hearing" and that the carrier need not make a "prima facie showing that all rates therein are just, reasonable, and free of undue discrimination. . . ." 42 F.C.C.2d 293, 300 (1973); see also 33 F.C.C.2d 522, 523 (1972); Associated Press v. F.C.C. 448 F.2d 1095, 1104 (D.C. Cir. 1971).

Commission adopted Section 61.58 of the Commission's Rules which increased from 30 to 60 days the notice required for every tariff publication which constitutes a rate increase. The Commission expressly rejected suggestions from certain customer groups that the period of notice should be extended to 90 days (25 F.C.C.2d at 971), and it stated that to require a longer period of notice could "prejudice the carrier unduly" (id. at 973). Thus, in adopting the 60-day notice period, the Commission recognized the prejudice to a carrier flowing from the deferral of its tariff filings, and concluded that no more than 60 days' notice should be required for rate increases. Further, the Commission has made it clear that extension of the notice period specified in Section 203 was not an extension of the maximum statutory suspension period specified in Section 204. (Id. at 970-971.) The Commission's rules were designed only to permit a determination as to whether a tariff should be suspended or designated for hearing. 40 F.C.C.2d at 153.

6. The Networks' petition must thus be viewed as a thinly veiled attempt to circumvent the maximum statutory suspension period set forth in the Communications Act. 47 U.S.C. §204. It is well established that neither the Commission nor the courts can alter this explicit statutory suspension period. AT&T v. F.C.C., 487 F.2d 864 (2d Cir. 1973); Arrow Transportation Co. v. Southern Railway Co., 372 U.S. 658 (1963); United States v. SCRAP, 412 U.S. 669 (1973).

To grant the Networks' petition would be to adopt "a device which disrupt[s] the statutory scheme of carrier initiated rate changes." AT&T v. F.C.C., 503 F.2d 612, 617 (2d Cir. 1974). It would thus constitute the type of "gimmickry" (in the words of the Court of Appeals for the Second Circuit in its "notice" decision) which the Court recognized would exceed the bounds of Commission authority under the Act. Id. at 617.

7. The Communications Act provides that, when questions as to lawfulness of a tariff filing are presented, the Commission has authority to defer, pending investigation, the effective date of the tariff filing only for a specific suspension period. The deferral of a rate filing under Section 204 cannot be "for a longer period than three months beyond the time when it would otherwise go into effect." During suspension, rate increases which are entirely lawful are irretrievably lost to the carrier. If investigation has not been completed during the suspension period and increased rates go into effect, the Commission may make the increased rates subject to an accounting order and possible refund. In this manner the Networks would be fully protected. Such a statutory scheme represents a "careful accommodation of the various interests involved." United States v. SCRAP, 412 U.S. 669, 697 (1973). Thus, an extension of the notice period, as requested by the Networks, would contravene this statutory

scheme and constitute an irrevocable loss to the carrier who would be denied urgently needed rate relief. Congress clearly realized "that when a carrier is prevented from placing in effect new rate increases it may suffer irreparable loss which in turn may impede the provision of adequate service during a period of rising costs." AT&T v. F.C.C., supra, 487 F.2d at 874.

8. The Networks cite the recent decision of the Second Circuit in AT&T v. F.C.C., 503 F.2d 612 (1974), but this decision does not sanction the type of retroactive rulemaking the Networks seek here. The Court of Appeals emphasized that its holding was:

> " . . . limited to the sole question of the statutory power of the FCC (not the wisdom of its policy) to extend the 30-day notice provision to 60 days." Id. at 615.

The Court made clear that its decision did not contemplate an extension of the notice requirement which would subvert the statutory scheme:

> " . . . The argument that the result here would permit the FCC to make gross changes of time which would pervert the statutory grant is not relevant. We are not here presented with such a case or claim and see no point in anticipating such an event . . . ." Id. at 618.

9. An extension of the statutory 30-day notice requirement to the 150 days' notice sought by the Networks would be a "gross" change of time which "would pervert the statutory grant." The 150-day notice requirement would alone exceed the combined

30-days' notice and 3 months' suspension periods specified by Congress in enacting the Communications Act. Since, as noted above, the increased rates would be subject to suspension at the end of the 150-day notice period, the practical effect of the Networks' proposal could result in an 8-month deferral of the rate increase. Clearly the Commission lacks authority to extend the notice period to the 150 days sought by the Networks.*

10. Even if the Commission had authority to extend the notice requirement to 150 days as requested by the Networks (which it does not), it is clear that the Chief of the Common Carrier Bureau has not been delegated such authority

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* The Networks (p. 11) ask the Commission to ignore the 60-day maximum notice period provided in Rule 61.58 and, after the fact, adopt a new rule in this instance. But Rule 61.58 cannot now be altered retroactively and on an ad hoc basis. Retroactive application of a new, different rule not in existence at the date of the filing will prejudice AT&T, which "had a right to believe that the old rules would govern" its January 3, 1975 filing. Pacific Molasses Company v. F.T.C., 356 F.2d 386, 389-90 (5th Cir. 1966). See also, Smith v. Resor, 406 F.2d 141, 145 (2d Cir. 1969); Service v. Dulles 354 U.S. 363, 388 (1957); NLRB v. Welcome-American Fertilizer Company 443 F.2d 19, 20 (9th Cir. 1971). Further, the relief requested would not meet the Section 553 requirements of the Administrative Procedure Act (5 U.S.C. §553), incorporated in Sections 1.401-427 of the Commission's Rules. Such relief could only be granted by rulemaking after notice and opportunity to participate by interested parties, 5 U.S.C. §553(c), as the Commission itself recognized in its proceedings in Docket 18703 and by its institution of the rulemaking proceeding in Docket 19741. See 40 F.C.C.2d 1099 (1973).

by the Commission. Section 0.297 of the Rules delegates authority to the Chief of the Common Carrier Bureau to act upon matters in connection with "the administration of tariff regulations" established by the Commission pursuant to Section 203 of the Communications Act. The "administration" of tariff regulations does not encompass the power to establish a new rule. Yet that would be the effect if the Chief of the Common Carrier Bureau imposes an additional notice requirement beyond that specified in Section 61.58. No provision is made in the Commission's Rules for the imposition by the Chief of the Common Carrier Bureau, at the behest of a customer, of a new tariff filing rule different from that specified by the Commission itself. The imposition of additional requirements would thus be substantive action beyond the Chief's administrative authority.

WHEREFORE, for the reasons stated herein, the Networks' "Petition to Extend Notice Period" should be denied.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By_____
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Its Attorneys

February 10, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of		
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT	)	DOCKET NO. 18128
Revision of Tariff F.C.C. No. 260 Private Line Service, Series 5000 (TELPAK)	)	

TO: The Commission

PARTIAL OPPOSITION OF MICROWAVE COMMUNICATIONS, INC., TO PETITION OF AERONAUTICAL RADIO, INC., (ARINC)

Microwave Communications, Inc. (MCI), by its attorneys, respectfully opposes herein a portion of the Petition To Reject Or Secure Withdrawal Or To Suspend And Order An Accounting, And To Investigate Increased Rates, filed in the above-captioned proceeding, and in relation to American Telephone and Telegraph Company Tariff Transmittal No. 12241, on January 28, 1975, by Aeronautical Radio, Inc. (ARINC). The specific portion of that Petition which MCI opposes is the request on Pages 15 through 17 thereof that the Commission reopen the record in Docket No. 18128 so that evidence concerning AT&T's January 3, 1975, proposed rate increases for Telpak and Teletypwriter Services be considered in that proceeding. While MCI shares with ARINC a sense of frustration at seeing AT&T free to disrupt Commission proceedings by the "pancaking" of rate proposals, it cannot agree that a delay in the termination of Docket

No. 18128 is necessary. It certainly is not desirable.

On Pages 11 through 14, ARINC succinctly summarizes the status of proceedings in Docket No. 18128. MCI would, in addition, draw the Commission's attention to the colloquy between Chairman Richard E. Wiley and counsel for Air Transport Association at pages 144-145, of the transcript of oral argument in Docket No. 19919 (Bell Hi/Lo Rate Proposal) on November 5, 1974. The facts are that the Commission has indicated that it is nearing a decision in Docket No. 18128, and that such a decision would be indefinitely delayed were ARINC's suggested course to be followed. MCI cannot believe that the public interest or the interests of AT&T's customers or competitors would be served by such a result.

The Commission courageously tried to prevent this kind of "pancaking" of conflicting rate proposals by directing AT&T to seek prior approval before filing new private line rate proposals while Docket No. 18128 was still pending, American Telephone and Telegraph Company, 33 FCC2d 522,525 (1972). However, AT&T was able to get a court reversal of that practical and orderly action, American Telephone and Telegraph Company v. FCC, 487 F2d 864 (C.A.2d, 1973). Having thus been denied a remedy against AT&T's filing of multiplicitous rate proposals, the Commission has no choice but to press on to a decision in any given rate case at the earliest possible time. With a decision in Docket No. 18128 literally

within reach, ARINC's suggestion should be rejected.

Respectfully submitted,

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February 12, 1975

Its Attorneys

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN TELEPHONE & TELEGRAPH COMPANY, Long Lines Department Revision of Tariff F.C.C. No. 260, Series 6000 Channels	)	Transmittal No. 12241

STATEMENT OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
IN SUPPORT OF PETITION
TO EXTEND NOTICE PERIOD

The National Association of Broadcasters (hereinafter NAB), by its counsel, hereby submits its Statement in support of the "Petition to Extend Notice Period" of the American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc. (hereinafter the Network Companies) in the above-captioned proceeding. NAB endorses the Network Companies' request for a 90 day extension of the notice period, pursuant to Section 203 of the Communications Act of 1934, as amended (47 U.S. Code §203), thereby effecting a delay in the effective date of Tariff F.C.C. No. 260 of the American Telephone & Telegraph Company (hereinafter AT&T), Transmittal No. 12241. It is respectfully suggested that such an extension is necessary in light of the enormous volume of data and other material submitted by AT&T on its behalf which must now be subjected to careful scrutiny and

analysis by all interested parties.

NAB is a non-profit association of radio and television broadcasters. Its membership as of February 12, 1975, includes 2397 standard broadcast stations, 1604 FM broadcast stations, 539 television broadcast stations and all nationwide, commercial broadcast networks. In accordance with its by-laws, the objective of the NAB

> . . . shall be to foster and promote the development of the arts of aural and visual broadcasting in all its forms; to protect its members in every lawful and proper manner from injustices and unjust exactions; to do all things necessary and proper to encourage and promote customs and practices which will strengthen and maintain the broadcasting industry to the end that it may best serve the public.

Typically, both AM and FM broadcast stations are users of series 6000 channels for which AT&T has proposed tariff increases. Like the Network Companies, these individual and group-owned stations will be adversely affected by the across-the-board 7.8% rate increase for series 6000 channel customers. The economic impact of the proposed tariff revision will vary among the broadcast users. In all instances, however, there are common public interest considerations which should be assessed when evaluating the AT&T proposal. It is submitted that in order to do justice to those public interest considerations, a careful examination of the AT&T supporting data must precede Commission overview of the tariff proposal. The sheer volume of data submitted by AT&T, however, frustrates even the most serious endeavors to assess and analyze this important matter in advance of

the March 4, 1975, effective date of Tariff No. 260. Even disregarding for the moment the merits of the AT&T claims that some cost increases are necessary, there remains the important question of who should bear these costs and in what proportion.

Public Policy Considerations Dictate the Need for More Time.

Broadcasting generally provides a unique and vital service to the public through the speedy dissemination of news, discussion and entertainment. No other communications medium can boast of a similar role. This continuous, instantaneous and widespread dissemination of news and information coupled with religious, educational, sports and entertainment programming makes possible an informed citizenry with an unparalleled access to the events of our time.

Transmittal No. 12241 would endow AT&T with revenues from radio broadcasters in an amount estimated to be in excess of $23 million annually; an amount which exceeds current assessments by approximately $1.7 million annually.[1/] Little, if anything, is known of the direct and indirect impact that cost increase will have upon radio broadcasting. It is submitted that where those costs cannot be readily absorbed a likely consequence will be reduced program quality or quantity, or both.

1/ See Petition to Suspend, Designate for Hearing and Impose Accounting Conditions, Transmittal No. 12241, of the American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc., at notes 1 and 2 and accompanying text.

Accordingly, where there are indications that a tariff revision may hamper the quality or quantity of these programs in the future, as is the probable case with Tariff No. 260, the public policy considerations attending the proposal are deserving of especially meticulous examination.

The Commission Has the Authority to Extend the Notice Period.

Section 203(b) of the Communications Act of 1934 provides that changes in charges by common carriers must be published for a period[2/] in advance of the effective date. It further states that the Commission has the discretionary power to modify the statutory requirements of Section 203.[3/] This power is limited only by a requirement that good cause be shown for enacting such modifications.

NAB submits that "good cause" exists and has been shown by the Network Companies' Petition as well as by information included in this supporting statement. The Chief of the Common Carrier Bureau, according to Section 0.297 of the Commission's rules and regulations, has the authority to administer changes in the statutory notice requirements rendered pursuant to Section 203(b).

In response to various petitions by private line users urging suspension of the effective date for the tariff proposal, AT&T suggests that these interests can be protected by an accounting order.[4/] AT&T claims that it "urgently" needs the rate increase. To the contrary, however, NAB submits

2/ Originally thirty days, the Commission has modified the notice period so as to require sixty days. Section 61.58 of the FCC Rules and Regulations.

3/ American Telephone & Telegraph Co. v. FCC, 503 F.2d 612, 615 (1974).

4/ Reply of American Telephone & Telegraph Co., Long Lines Dept., Transmittal No. 12241 at 20.

that certain public policy considerations generally ignored by AT&T demand immediate attention. NAB is requesting, therefore, that preliminary even to any consideration by the Commission of whether to invoke Section 204 of the Communications Act suspending the effective date for the new tariff, the initial notice period be extended so as to provide much needed time for examining this matter more thoroughly. It simply cannot be presumed that the public interest will be served by expeditious implementation of the tariff, even with an accounting order. The requested 90 day extension of the notice period is not unreasonable in light of the momentous nature of the AT&T tariff and its effect upon all aspects of American life.

Conclusion

In view of the foregoing, NAB respectfully requests that the "Petition to Extend Notice Period" of the Network Companies be granted.

Respectfully submitted,

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February 20, 1975

NEWS

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For recorded listing of releases and texts call 632-0002

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Report No. 1751 COMMON CARRIER ACTION February 27, 1975 - C

FCC GRANTS AT&T $364 MILLION INCREASE IN INTERSTATE REVENUES

The Commission voted today to allow the American Telephone and Telegraph Company to file tariffs increasing its annual revenues from interstate operations by $365 million before taxes. In doing so, it rejected AT&T's proposal to increase its annual pre-tax revenues by $717 million.

The Commission in 1972 had prescribed an overall rate of return for interstate operations of 8.5 percent based on then-prevailing costs of capital. In allowing the present increase, the Commission took cognizance of the fact that economic conditions had changed significantly since 1972.

Under these circumstances, the FCC concluded it should modify its 1972 prescription to allow AT&T to increase its rate of return to 8.74 percent. This action took into account AT&T's current capital structure and its increased cost of embedded debt.

The Commission, absent a hearing, was unable to determine to what extent, if any, AT&T's cost of equity had increased and, therefore, set this question for hearing on an expedited basis. The FCC indicated that after this hearing it would make such further modifications to AT&T's allowable rate of return as would then be appropriate.

The Commission said its Order would be issued next week.

Action by the Commission February 27. Chairman Wiley and Commissioners Washburn and Robinson; Commissioners Reid and Quello concurring; Commissioners Lee and Hooks concurring in part and dissenting in part; with Chairman Wiley and Commissioners Lee and Reid issuing statements.

-FCC-

A. 475

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

March 3, 1975

IN REPLY REFER TO:

9510

American Telephone and Telegraph Company
Long Lines Department
32 Avenue of the Americas
New York, New York 10013

Attention: W. E. Albert
Administrator, Rates and Tariffs

Gentlemen:

This is in reference to your Company's Transmittal No. 12241 dated January 3, 1975 and accompanying tariff revisions providing for increased rates applicable: (1) to Long Distance Message Telecommunications Service (MTS); (2) Wide Area Telecommunications Service; and (3) Private Line Services. These proposed revisions to your Tariff F.C.C. Nos. 263, 259, and 260, respectively were scheduled to become effective March 4, 1975 except for certain MTS rates from the United States to Canada and Mexico which were published to become effective on March 29, 1975.

As you know, the Commission on February 27, 1975 voted to reject these proposed revisions. Accordingly, they are returned herewith pursuant to Section 61.36 of the Commission's Rules and under authority delegated under Section 0.291(d) of the Rules.

Sincerely yours,

Ruth V. Reel

Ruth V. Reel
Chief, Tariffs and Services Division
for Chief, Common Carrier Bureau

Enclosures

CERTIFICATE OF SERVICE

I, Jules M. Perlberg, certify that I served copies of the Petitioner's Brief and the Joint Appendix this 2nd day of May, 1975, by mail, postage prepaid, on the Federal Communications Commission, the United States of America, and each of the intervenors in No. 75-4046, as set forth in the attached list.

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